(18,795.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 200.

A. CHESEBROUGH ET AL., OWNERS AND CLAIMANTS OF THE SHIP "IROQUOIS," PETITIONERS,

vs.

MATTHEW BRIDGES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

	Page.
Stipulation to omit certain exhibits in printing record on appeal	1
Transcript from the district court of the United States for the northern district of California	2
Statement	2
Libel	4
Claim	8
Amendments to libel	10
Answer	11
Hearing	18
Statements of counsel	19
Evidence for libellant	21
Testimony of Matthew Bridges	21
Evidence for claimant	35
Testimony of Chadwick Thompson	35
Evidence for libellant	69
Testimony of H. K. H. Mitchell	69
Mark J. White	71
Wm. M. Lawlor	82
S. H. Parker	87
Umberto Carrescio	91
Matthew Bridges (recalled)	106

Page.
Stipulation to send up original exhibits on appeal 107
Opinion of De Haven, J. 108
Decree 116
Notice of appeal 118
Assignment of errors 119
Clerk's certificate 120
Libellant's Exhibit No. 1—The American table 122
Order of submission 125
Opinion 126
Decree 130
Clerk's certificate 131
Writ of certiorari 132
Stipulation as to return to writ of certiorari 132
Certificate and return to writ of certiorari 133

In the United States Circuit Court of Appeals, for the Ninth Circuit, Northern District of California.

IN ADMIRALTY.

The Ship "IROQUOIS" etc., A. CHESEBROUGH et al.,
Claimants and Appellants,

vs.

MATTHEW BRIDGES,
Libelant and Appellee.

Stipulation to Omit Certain Exhibits from the Printed Transcript on Appeal.

It is hereby stipulated by and between the respective parties to the above-entitled cause that the following exhibits, to wit:

I. The official log-book, "Libelant's Exhibit No. 2";

II. The mate's or ship's log-book, also marked "Libelant's Exhibit No. 2";

III. Chart, "Libelant's Exhibit No. 4";

IV. Chart, "Libelant's Exhibit No. 5";

Being all of libelant's exhibits except his exhibit No. 1, marked "The American Table";

V. Chart, "Claimant's Exhibit No. 1";

VI. Chart, "Claimant's Exhibit No. 2";

VII. Chart, "Claimant's Exhibit No. 3";

Being all of claimant's exhibits, may be omitted from the printed transcript of the record on appeal, and that the originals thereof, transmitted to this court with said record, may be referred to and used by either party on

the hearing of said appeal with the same force and effect as if the same had been included and made a part of said printed record.

San Francisco, April 2d, 1902.

WALTER G. HOLMES, and
DANIEL T. SULLIVAN,
Proctors for Libelant and Appellee.
MILTON ANDROS,
Proctor for Claimants and Appellants.

[Endorsed]: No. 815. In the United States Circuit Court of Appeals, for the Ninth Circuit, Northern District of California. The ship "Iroquois" etc., A. Chesebrough et al., Claimants and Appellants, vs. Matthew Bridges, Libelant and Appellee. Stipulation to Omit Certain Exhibits from the Printed Transcript on Appeal. Filed April 2, 1902. F. D. Monckton, Clerk.

In the District Court of the United States, in and for the Northern District of California.

MATTHEW BRIDGES,
Libelant,
vs.
The Ship "IROQUOIS," Her Tackle, Apparel, and Furniture.
} No. 12,364.

Statement.

March 15th, 1901: Verified libel was filed and monition issued to the United States marshal for the Northern District of California.

Names of Original Parties to the Action.

Libelant: Matthew Bridges.

Defendant. The ship "Iroquois," her tackle, apparel, and furniture.

Claimant's: Arthur Sewall, Francis B. Torrey, Albert B. Nickels, William A. Bradstreet, Frederick S. Bosworth, S. A. Reynolds, Anna S. Foster, Alice W. Sewall, Frank Sewall, Oscar T. Sewall, J. Lawrence Pool, Clara Harris (Trustee), Clara Harris, Lewis B. Parrott, William Babcock, Andronicus Chesebrough (Trustee), David B. Dearborn, Arthur Wichstead, William H. Starbuck and Frank E. Page.

Dates of the Filing of the Pleadings.

March 15th, 1901: Libel.

March 18th, 1901: Claim of Arthur Sewall, et al.

April 20th, 1901: Amendments to libel filed.

May 1st, 1901: Answer of A. Sewall et al., filed.

Attachment of Property and Proceedings Thereunder.

March 15th, 1901: Monition issued and delivered to the United States marshal for the Northern District of California. Said monition afterward returned into court with the following return by the United States marshal: "In obedience to the within monition, I attached the ship 'Iroquois' therein described, on the 15th day of March, 1901, and have given due notice to all persons claiming the same that this Court will, on the 26th day of March, 1901 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same."

March 18th, 1901: Claim filed by Arthur Sewall, Francis B. Torrey, Albert B. Nickels, William A. Bradstreet, Frederick S. Bosworth. S, A. Reynolds, Anna S. Foster, Alice W. Sewall, Frank Sewall, Oscar T. Sewall, J.

Lawrence Pool, Clara Harris (Trustee), Clara Harris, Lewis B. Parrott, William Babcock, Andronicus Chesebrough (Trustee), David B. Dearborn, Arthur Wichstead, William H. Starbuck, and Frank E. Page, together with an Admiralty Stipulation for the release of the ship "Iroquois," etc., in the sum of six thousand (6,000) dollars, which amount was fixed by stipulation between the proctors for the respective parties, and notice of said bonding was given to said marshal by the clerk of the United States District Court.

May 17th and June 6th, 1901: The above-entitled cause was heard on said dates in the United States District Court for the Northern District of California, at the city and county of San Francisco, before the Honorable John J. De Haven, Judge of said Court.

February 17th, 1902: Filed opinion.

February 18th, 1902: A final decree in the above-entitled cause was filed.

February 27th, 1902: Notice of appeal in the above-entitled cause was this day filed and served.

In the District Court of the United States, for the Northern District of California.

IN ADMIRALTY.

MATTHEW BRIDGES, Libelant,
vs.
The Ship "IROQUOIS," Her Tackle, Apparel, and Furniture,
No. 12,364.

Libel.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The libel of Matthew Bridges, of the Northern District of California, against the ship "Iroquois," her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of damage, civil and maritime, alleges as follows:

I.

The said ship "Iroquois" is, and at all the times hereinafter mentioned was, a vessel of the United States of America, and is now within the Northern District of California.

II.

On or about the 23d day of February, 1900, said vessel was on the high seas on a voyage from the port of New York to the port of San Francisco, and libelant was a seaman in her service.

III.

On or about said day, while said vessel was on the high seas as aforesaid, and at latitude 56° 50′ south and longitude 67° 36′ west or thereabouts, and while libelant was in the service of said vessel as aforesaid, and engaged in the performance of his duties in such service, libelant fell from the mainyard of said vessel to the deck of said vessel and thereby broke his right leg in two places and two of his ribs.

IV.

Libelant's said injuries were treated by the then master of said vessel as well as said master was competent to treat them, but neither said master nor any other person, then or during the remainder of said voyage on board said vessel, had sufficient skill or experience to properly set libelant's said broken leg or to properly treat libelant's said other injuries, and libelant's said in-

juries were not properly treated while libelant thereafter was kept on board said vessel.

V.

At the time of said accident said vessel was 250 miles or thereabouts from the port of Stanley, on East Falkland Island, and if libelant had been taken in said vessel by said master to said port libelant could there have received proper surgical treatment for his said injuries. Libelant could also have received proper surgical treatment for his said injuries if he had been taken in said vessel by said master to the port of Valparaiso, or to any one of several other ports in the southern port of South America.

After said accident said master could have taken libelant in said vessel to the said port of Stanley or to the port of Valparaiso, or to either of said other ports, with small loss of time to the said voyage of said vessel and in time for libelant to have received proper surgical treatment for his said injuries, and in time to have avoided the results of said injuries hereinafter set forth, but said master neglected so to do, and instead kept libelant in the forecastle of said vessel from the day of said accident until about the 6th day of May, 1900, when said vessel arrived at the port of San Francisco and completed said voyage, and during said period supplied libelant with no different food than the food prepared for the occupants of said forecastle.

VI.

Shortly after his arrival at the port of San Francisco as aforesaid, libelant went to the United States Marine Hospital at said port for surgical treatment of his said injuries and has remained at said hospital under such treatment ever since. When libelant's said leg was first

examined by the surgeon at said hospital its said broken bones overlapped each other and were not united and had not united since said accident. The surgeon at said hospital attempted thereafter to properly set said leg; but so long a time had elapsed since said accident that such procedure was impossible, and said leg was then in such condition that its amputation was advisable, and it was, in consequence, amputated near the knee by the surgeon at said hospital.

VII.

In consequence of the neglect of said master after said accident to take libelant to said port of Stanley or to said port of Valparaiso, or to one of said other ports in the southern part of South America, for surgical treatment, libelant was subjected to great and protracted pain and suffering from said injuries, and the amputation of libelant's said leg became advisable and said leg was amputated as aforesaid. Such results would have been avoided if said master had not been guilty of such negligence.

VIII.

By reason of such neglect of said master the libelant has sustained damage in the sum of five thousand dollars.

IX.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said ship "Iroquois," her tackle, apparel, and furniture, and that all persons claiming or having any interest therein may be cited to appear and answer un-

der oath all and singular the matters aforesaid, and that libelant may be decreed herein the sum of five thousand dollars, damages as aforesaid, and that the said ship, her tackle, apparel, and furniture may be condemned and sold to pay the same and costs herein, and that libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

MATTHEW BRIDGES.

Subscribed and sworn to before me this 14th day of March, 1901.

GEO. E. MORSE,
United States Commissioner for the Northern District of California, at San Francisco.

WALTER G. HOLMES,
Proctor for Libelant.

[Endorsed]: Filed March 15, 1901. Geo. E. Morse, Clerk.

UNITED STATES OF AMERICA.

District Court of the United States of America, for the Northern District of California.

IN ADMIRALTY.

MATTHEW BRIDGES, Libelant,

vs.

The Ship "IROQUOIS," etc.

Claim.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The claim of Arthur Sewall, Francis B. Torrey, Albert B. Nickels, William A. Bradstreet, Frederick S. Bosworth, S. A. Reynolds, Anna S. Foster, Alice W. Sewall, Frank Sewall, Oscar T. Sewall, J. Lawrence Pool, Clara Harris (Trustee), Clara Harris, Lewis B. Parrott, William Babcock, Andronicus Chesebrough (Trustee), David B. Dearborn, Arthur Wichstead, William H. Starbuck, and Frank E. Page, to the ship "Iroquois," her tackle, apparel, and furniture, now in custody of the marshal of the United States for the said Northern District of California, at the suit of Matthew Bridges, alleges:

That they are the true and bona fide owners of the said ship "Iroquois," her tackle, apparel, and furniture, and that no other person is owner thereof, as appears from the register of said ship.

Wherefore, these claimants pray that this Honorable Court will be pleased to decree a restitution of the same to them and otherwise right and justice to administer in the premises.

A. CHESEBROUGH,
Part Owner for Self and Co-owners.

Northern District of California—ss.

Sworn to before me this 18th day of March, A. D. 1901.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: Filed March 18, A. D. 1901. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, for the Northern District of California.

IN ADMIRALTY.

MATTHEW BRIDGES,
Libelant,
vs.
The Ship "IROQUOIS," etc., ARTHUR SEWELL, et al.,
Claimants.
No. 12,364.

Amendments to Libel.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

Matthew Bridges, the libelant in the above-entitled cause, hereby amends his libel in said cause, as follows, to wit:

I.

By inserting, after the word "American," on line 16 of page 3 of said libel, and before the word "after," on line 17 of page 3 of said libel, the following, to wit, "or on a course proper for said vessel to have taken after said accident."

II.

By inserting, after the word "American," and before the word "for," on line 8 of page 5 of said libel, the following, to wit, "or on a course proper for said vessel to have taken after said accident."

MATTHEW BRIDGES.

Subscribed and sworn to before me this 19th day of April, 1901.

J. S. MANLEY,
United States Commissioner for the Northern District of California, at San Francisco.

WALTER G. HOLMES,
Proctor for Libelant.

[Endorsed]: Filed April 20, 1901. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk

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UNITED STATES OF AMERICA.

District Court of the United States of America, for the Northern District of California.

IN ADMIRALTY.

MATTHEW BRIDGES,
Libelant,
vs.
The Ship "IROQUOIS," Her Tackle, Apparel, and Furniture. A. CHESEBROUGH et al,
Claimants.

Answer.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California.

The answer of Andronicus Chesebrough (trustee), William Babcock, Lewis B. Parrott, Arthur Sewall, Francis B. Torrey, Albert B. Nickels, William A. Bradstreet, Frederick S. Bosworth, S. A. Reynolds, Anna S. Foster,

Alice W. Sewall, Frank Sewall, Oscar T. Sewall, J. Lawrence Pool, Clara Harris (trustee), Clara Harris, David B. Dearborn, Arthur Wichstead, Wliliam H. Starbuck and Frank E. Page, to the libel of Matthew Bridges against the ship "Iroquois," her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of damage, civil and maritime, alleges:

I.

Answering unto the first article in said libel, these claimants admit the allegations therein.

II.

Answering unto the first article in said libel, these claimants admit the allegations therein.

III.

Answering unto the third article in said libel, these claimants admit the allegations therein.

IV.

Answering unto the fourth article in said libel, these claimants admit the allegation therein that the injuries of said libelant were treated by the said master of said vessel as well as said master was competent to treat them, but as to the allegation that said master had not sufficient skill or experience to properly set said libelant's broken leg, or that the injury to said libelant's leg was not properly treated by the said master, these claimants are ignorant so they can neither admit nor deny the same, wherefore they call for proof thereof; and as to the allegation that the said master had not sufficient skill or experience to treat the other injuries, to wit: the broken ribs of said libelant, or that the same were not

properly treated by said master, these claimants on their information and belief deny the same.

V.

Answering unto the fifth article in said libel, these claimants on information and belief deny that at the time of the happening of said accident, the said vessel was 250 miles or thereabouts, from Port Stanley on the East Falkland Island; on the contrary, they aver on information and belief that said vessel was, at the time of the happening of said accident, not less than 480 miles from Port Stanley on any course which said vessel could properly have taken; and whether or not, if said libelant had been taken in said vessel to said Port Stanley he could there have received proper or any surgical treatment for said injuries, as in said article alleged, these claimants are ignorant, so they can neither admit nor deny the same, wherefore they call for proof thereof.

Further answering unto said article and to the allegations therein that said libelant could, if he had been taken by said master to the port of Valparaiso, or to any other port in the southern part of South America, on any course which said vessel could properly have taken, have received proper surgical treatment for his said injuries, they are ignorant so they can neither admit nor deny the same, wherefore they call for proof thereof.

Further answering unto said article these claimants, on their information and belief deny, that after said accident the said master of said ship could have taken the libelant in said vessel to said Port Stanley or to the port of Valparaiso, or to any other port in the southern part of South America with small loss of time to the said voyage of said vessel, or in time for libelant to receive proper surgical treatment for his said injuries, or

in time to have avoided the results of said injuries as set forth in said libel.

Further answering unto said article they admit that said master did not proceed with said libelant to Port Stanley or to the port of Valparaiso, or to any other port in the southern part of South America, or to any port except the port of San Francisco, where said vessel arrived on or about the 7th day of May. 1900.

Further answering unto said libel these claimants on their information and belief deny, that, after the injury to said libelant, the said libelant was supplied with no different food than the food prepared for the occupants of the forecastle, in which said libelant was laid up after his said injury.

VI.

Answering unto the sixth article in said libel, these claimants are ignorant of all the matters and things therein set forth so they can neither admit nor deny the same, wherefore they call for proof thereof, except the allegation that he entered the Marine Hospital for treatment.

VII.

Answering unto the seventh article in said libel, these claimants on their information and belief deny that there was any neglect on the part of said master in not taking the said libelant to said Port Stanley or to the port of Valparaiso, or to any other port in the southern part of South America for surgical or any treatment, or that in consequence of any supposed neglect of said master the said libelant was subjected to pain or suffering from his said injuries, or the alleged amputation of his said leg, or that, in respect to any of the matters or things in said article set forth, the said master was guilty of any negligence whatever.

VIII.

Answering unto the eighth article in said libel, these claimants on their information and belief deny that in consequence of any supposed neglect of said master, said libelant sustained damage in the sum of $5,000, or in any sum whatsoever.

IX.

Answering unto the ninth article in said libel, these claimants admit the jurisdiction of this Honorable Court and the United States in the premises, but deny except as hereinbefore is admitted, that all and singular the same are true, except such whereof they have pleaded that they are ignorant.

X.

And for a further answer unto said libel, these claimants on their information and belief, aver that the American ship "Iroquois," of 1997 net registered tons, laden with a general cargo of great value, on the 25th day of December, 1899, sailed from the port of New York bound to the port of San Francisco. That the libelant was a seaman on board of said ship for said voyage. That on said voyage said libelant, while on the mainyard of said vessel and engaged in furling the mainsail, accidentally, and without any fault or negligence on the part of these claimants, fell from said yard to the deck of said ship, striking the same with such force that his right leg was broken in two places and two of his ribs were factured. That at the time of said accident the said ship was on the South Pacific Ocean, and in latitude 56° 50′ south, and longitude 67° 30′ west, and about 480 miles to the southward and westward of Port Stanley on the East Falkland Island, and about 2,800 miles from the port of Valparaiso on a direct course to that port, and about 800

miles to the northward of the course of said vessel when bound to the port of San Francisco. At this time the winds were variable both in direction and force, at times easterly, but mostly from the northward and westward, and varying in force from light to tempestuous.

That immediately after the accident and injury to said libelant, the master of said vessel with the aid of others of the ships' company, proceeded to and did set the leg of said libelant in a proper manner so far as he had sufficient skill so to do, and that he did so successfully set the fractured ribs of said libelant that on his arrival at the port of San Francisco on the 7th day of May, 1900, when said voyage terminated, the said libelant had entirely recovered from the injuries last named. That after the bones of said libelant were set as aforesaid, he was put in the forecastle of said ship, which was the only place in said ship where he could be put, and was there carefully and diligently attended to by the master and steward of said ship, was furnished with food specially prepared for him and suitable for a person in his disabled condition, and that such food was continuously furnished to him from day to day until he was able to go out on the deck of said ship and on crutches move about thereon, when he was furnished with the same kind of good and wholesome food that was furnished to others of the crew of said vessel, to which he made no objection, but had he so requested, he would still have been furnished with the same kind of food that was used in the cabin. That as soon after the accident as the master of said ship deemed it safe so to do, the bandages and splints on his leg were taken off, his leg carefully examined and washed, and thereafter at least once in every two days the bandages and splints were removed and his leg carefully washed and cleansed and such ointment or other application as the master thought might be

beneficial was applied. That from repeated examinations of his leg it appeared that the bones were knitting and that his leg was in a fair way to become sound and strong.

When said ship was in the latitude of Valparaiso, there was no indication, so far as the master of said ship could discover, that his leg was not in the process of healing, and there was nothing to indicate that there was any necessity to bear away for said port, even if the same could have been easily and conveniently done, but which, had it been done would have lengthened the voyage of said ship about 1,600 miles in distance, and at a loss of time which cannot be with any certainty stated, but probably, under the most favorable conditions, not less than two weeks.

That after the arrival of said ship at San Francisco, said libelant was paid off, and on the 14th day of May was admitted to the Marine Hospital, nor did he at any time after the arrival of said ship and before she departed from said port, notify or inform the master or consignees or agents of the ship that he desired to go, or that he had gone to said hospital, and the first knowledge or intimation that the master of said ship or the owners thereof, or the agents at San Francisco of said owners, had of the alleged condition of said libelant, was after the arrival of said ship at San Francisco on the 9th day of March, 1901, about nine months after the arrival of said ship at said port with said libelant on board thereof, and after the company of said ship had become scattered, and except that of the master thereof, their whereabouts unknown and which is still unknown to these claimants.

Wherefore, these claimants pray that said libel be dismissed, and for costs.

A. CHESEBROUGH.
For Self and Co-owners.

Northern District of California.—ss.

Sworn to before me this first day of May, 1901.

[Seal] JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

MILTON ANDROS,
Proctor for Claimants.

[Endorsed]: Filed May 1, 1901. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk

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In the District Court of the United States, in and for the Northern District of California.

Honorable J J. DE HAVEN, Judge.

MATTHEW BRIDGES,
Libelant,
vs.
Ship "IROQUOIS,"
Claimants.
No. 12,364.

Testimony.

Friday, May 17, 1901.

Appearances:

WALTER HOLMES, Esq., and DANIEL J. SULLIVAN, Esq., for the Libelant.

MILTON ANDROS, Esq., for the Claimant.

This libel now came on for hearing in its regular order upon the calendar, before the Court, and the following proceedings were had:

Mr. HOLMES.—It is understood, if your Honor please, between counsel in this libel that only certain testimony should be heard to-day, and that only certain testimony continued to some time to be set hereafter, for further testimony, the reason being that the Master is about to leave.

The COURT.—I understand that. Proceed.

Mr. ANDROS.—What we desire is, to take the testimony of the libelant and the master of the ship. Those are the only two persons that can know anything about the facts of the case as they occurred at sea.

Mr. SULLIVAN.—If your Honor please, I am associated with Mr. Holmes as counsel for the libelant in this case. The case, if your Honor please, is, as I understand it, this: It is to recover damages from the ship and the owners in consequence of the failure and neglect of the master to take the libelant into some convenient place or port on the coast of South America, on a voyage from Cape Horn to San Francisco, after an accident had occurred to him by which he lost his leg, falling from aloft. Off Cape Horn, just about between the two oceans, in latitude 56 south, this man, who was a seaman on board of the "Iroquois," and who was at the time engaged in helping to take in the mainsail in heavy weather, was precipitated from the yard aft to the deck, by which he lost his leg. That was on the 23d day of February, 1900. The vessel arrived here on the 7th day of May of the same year, two months and a half, lacking a week, afterward. He was taken to the Marine Hospital about a week after he arrived here, and they tried every means to unite the bones, but it was found impossible. The injury had occurred too long ago, and there was no success, so his leg was amputated. He brings this action because the

captain failed to take him into a South American port, which he could have arrived at without great inconvenience, where this man could have had his leg attended to. He was twenty-one years of age at the time. That, as I understand, is the cause of action.

Mr. ANDROS.—If your Honor please: There are a few leading facts in this case about which I suppose there will be no serious dispute. In the first place, that this man fell accidentally, without his fault or the fault of the ship, from her mainyard, is conceded; that his leg was broken by the fall, and also that two of his ribs were broken, is also conceded. The place where the accident happened was in latitude 56° 50′ south, longitude 67° 36′ west, as stated by counsel. The master of the ship set his leg, and, as he thought, set it well. He also set the broken ribs, and it turned out that they had been set well, after he arrived here, so far as these were concerned, they were all right. The master had to set the leg, because there was no one else to do it. As stated by counsel, the complaint is that the captain, negligently, did not go into some port with this man, where surgical aid could probably have been procured. The libel sets forth that he should have gone to Port Stanley. To have done that, he would have had to double Cape Horn again and sail back about 480 miles to the eastward. There is also a claim made that the master should have gone to Valparaiso. If he had gone to Valparaiso, and on a direct course, he would have had to have gone about 600 miles out of his way. To have done this and to get on his course again, would have lengthened the voyage some 1,500 or 1,600 miles, as I understand, and would have taken some three weeks' time, if not more, which was very likely. No one can know how long it would have taken to have got to Port Stanley and then get back to the point where he turned to go to that place, because he would have had

to have sailed 480 miles to the westward, the distance that he lost in going to Port Stanley, and I think it will appear that on a westwardly course the wind would have been adverse, to say nothing of tempestuous weather likely to have been encountered.

There are other circumstances connected with the matter which will appear in the testimony, but these are the general facts, and therefore I suppose it will come to a mixed question of law and fact, whether, under the peculiar circumstances of the case, as they will be developed by the testimony, the captain did not do all under his contract with this seaman, that he was bound to do.

MATTHEW BRIDGES, the libelant, sworn.

Mr. SULLIVAN.—Q. How old are you?

A. 21.

Q. Where were you born?

A. In Washington.

Q. State of Washington? A. Yes, sir.

Q. What is your business?

A. I have been going to sea most right along.

Q. You were a sailor on board of this ship, the "Iroquois," in the year 1900, were you?

A. Yes, sir.

Q. On a voyage from New York to San Francisco?

A. Yes, sir.

Q. Able seaman? A. Yes, sir.

Q. You have lost a leg? A. Yes, sir.

Q. Where did you lose it?

A. I lost the leg out at the Marine Hospital. I had it broke aboard the ship "Iroquois."

Q. When?

A. On the 23d of February, 1900.

Q. At the time that you received the injury, where were you on board the ship?

(Testimony of Matthew Bridges.)

A. I was in the forecastle most all the time.

Q. At the time that you received the injury, how did the injury occur?

A. I fell from the mainyard.

Q. You were on the mainyard at the time?

A. Yes, sir.

Q. Doing what? A. Furling the mainsail.

Q. What watch were you in?

A. I was in the starboard watch.

Q. That is the captain's watch? A. Yes, sir.

Q. Were there all watches on deck?

A. Yes, sir, both watches on deck.

Q. Where was the ship?

A. Near the Horn, as near as I can find out.

Q. What was the weather?

A. The weather was rough.

Q. What sail had the ship on?

A. She had her topsails on.

Q. That is to say, all sails above the topsails had been taken in?

A. Yes, sir.

Q. What foresails had she whether she had jibs on?

A. She had the fore topmast staysail on.

Q. The other sails had been stowed?

A. Yes, sir.

Q. You were furling the mainsail? A. Yes, sir.

Q. Was the foresail set? A. Yes, sir.

Q. Fore topsail? A. Yes, sir.

Q. And the main topsail? A. Yes, sir.

Q. The mizzen topsail? A. Yes, sir.

Q. How, with respect to her course; was she on a free wind or close hauled at the time?

A. Close hauled on the wind.

(Testimony of Matthew Bridges.)

Q. What part of the yard arm were you on, whether the port yard arm or the starboard?

A. The starboard yard arm.

Q. Then she was on the starboard tack, was she not, to the best of your recollection, or do you recollect? It does not make much difference. You do not recollect?

A. No, sir.

Q. About what tonnage was the ship?

A. About 1969, I think.

Q. About 1900 tons? A. Yes, sir.

Q. That is your judgment? A. Yes, sir.

Q. How many men had she in the forecastle?

A. Sixteen.

Q. That would be about eight in each watch?

A. Yes, sir.

A. You had a captain? A. Yes, sir.

Q. A mate and second mate? A Yes, sir.

Q. And had you a steward and a cook?

A. Yes, sir.

Q. Who else, if anybody, was there on board—a carpenter? A. Yes, sir, a carpenter.

Q. That was the complement of the vessel?

A. Yes, sir.

Q. What time of the day was it that the injury occurred? A. It was along about 4 o'clock.

Q. In the afternoon? A. Yes, sir.

Q. What was done to you when you reached the deck, when you fell to the deck?

A. I was picked up by the mate, and the cook took me into the carpenter shop, and there I was let lay for a while, for about three hours; three hours and a half or four hours.

Q. What was done to you here, if anything?

(Testimony of Matthew Bridges.)

A. There were strings put around my leg and fastened up.

Q. The captain was there, I suppose?

A. Yes, sir.

Q. And who else? A. The carpenter.

Q. What was done to you was done by them?

A. Yes, sir.

Q. And after you had remained there you say three hours and a half, or about that neighborhood, where did you go then?

A. As soon as my shipmates got down they took me into the forecastle.

Q. Was this a house on deck? A. Yes, sir.

Q. That was a house on deck? A. Yes, sir.

Q. That is where you had your berth?

A. Yes, sir.

Q. How many bunks were there in the forecastle; that is to say, one or two or three, in tiers.

A. There were two in tiers.

Q. Which bunk were you in?

A. I was in the lower bunk?

Q. What was the height between the deck of the vessel in the house on deck and the ceiling, about?

A. About 7 feet; between 6 and 7.

Q. So that a man could walk? A. Yes, sir.

Q. Stand up without hitting his head?

A. Yes, sir.

Q. You were in the lower berth? A. Yes, sir.

Q. How long did you remain in that berth after the injury? A. The whole voyage.

Q. The injury occurred on the 23d of February?

A. Yes, sir.

Q. The vessel arrived here when?

(Testimony of Matthew Bridges.)

A. About the 6th or 7th of May.

Q. Well, after the captain and the carpenter dressed your leg, or did what they thought proper to it in the carpenter shop, and you were taken to the forecastle, when did they look at your leg again? When were the dressings taken off after that the first time, if at all?

A. About the last of March; about the 30th.

Q. During that period of time, from the date of the injury to the last of March, do you say that the dressings remained on there without having been removed at all?

A. Yes, sir.

Q. What was done on the last of March when they were taken off.

A. It was taken off, then there were sores that came on this leg all around.

Q. It was the right leg?

A. Yes, sir, and it was washed; and then they got some vaseline and put on the sores.

Q. How long after that was anything done to your leg? When was it examined again?

A. About five days afterwards.

Q. What was done?

A. It was washed again cleaned and put vaseline on again, and bandaged up with splints.

Q. How constantly or how frequently after that was that done before the vessel arrived here? How many days would elapse?

A. Every two or three days, on an average, I had to do it; between myself and my shipmates.

Q. Your shipmates in the forecastle and yourself?

A. Yes, sir.

Q. Do you mean to say you laid in your bunk there during the whole voyage, after the injury?

(Testimony of Matthew Bridges)

A. No, sir; I got up about the 8th of April; somewhere along there.

Q. For the first time? A. Yes, sir.

Q. Did you go out on deck? A. Yes, sir.

Q. How did you get out on deck?

A. My shipmates helped me out.

Q. You had crutches, I suppose? A. Yes, sir.

Q. Made by the carpenter? A. Yes, sir.

Q. You got in here on the 6th or 7th of May; that would be inside of a month before you arrived that you first got out on deck? A. Yes, sir.

Q. What was the condition of your leg at that time?

A. The sores were still on it, and it was still loose. It knitted, the doctors say. It was always like a joint in it.

Mr. ANDROS.—Never mind what the doctors say.

Mr. SULLIVAN.—Q. Just your own observation, what you know yourself. A. Yes, sir.

Q. It had not knit?

A. No, sir, it was always loose.

Q. By "loose" what do you mean? Give us a better definition. Do you mean dangling, or how?

A. Yes, sir, it would always work back and forth when the splints were off.

Q. Was that so that anybody could see it?

A. Yes, sir.

Q. It is admitted this occurred off the Horn, in 56° 50′. Had you ever been around the Horn before?

A. Yes, sir.

Q. Did you go from this side? A. Yes, sir.

Q. And returned?

A. No, sir, I did not return?

Q. You went around Cape of Good Hope?

(Testimony of Matthew Bridges.)

A. Yes, sir.

Q. Did you ever return from the Atlantic into the Pacific except upon this occasion?

A. No, sir.

Mr. SULLIVAN.—Have you the log-book here, Mr. Andros?

Mr. ANDROS.—Yes, the log-book is here.

Mr. SULLIVAN.—Q. Did you know anything about the state of the weather? (Addressing counsel.) I suppose the log-book gives that?

Mr. ANDROS.—I suppose so.

Mr. SULLIVAN.—Q. After the injury, were you conscious all the time that day that you were hurt?

A. Yes, sir, most all that night. I could not get nothing in my head that I remember.

Q. You understand what I mean by "conscious"? Did you know? A. No, sir, I did not.

Q. At the time you were hurt and taken to the carpenter's room, you knew what was going on when the captain came there, or did you not?

A. No, sir, not when he was bandaging up my leg.

Q. You did not? A. No, sir.

Q. You did not know whether it was he who was doing it or not? A. No, sir.

Q. You were told?

A. Yes, sir, I was told by my shipmates.

Q. Do you know anything about the weather after you recovered consciousness on the next day—what the state of the weather was?

A. It was rough weather then, very rough.

Q. Not being out, you could not tell what tack you were on, or how the vessel was sailing?

A. No, sir.

((Testimony of Matthew Bridges.)

Q. Could you see out on deck? No, sir.

Q. During the time you were in there, what food was given to you?

A. I got the same as the rest of my shipmates did.

Q. The same food? A. The same food.

Q. No difference in your diet at all?

A. No, sir.

Q. Exactly the same as the others?

A. Yes, sir.

Q. You got your food out of the common dish?

A. Yes, sir.

Q. All the way until you got to San Francisco?

A. Yes, sir.

Q. Are you a married man? A. No, sir.

Q. Parents living? A. Yes, sir.

Q. Where? A. In Washington.

Q. You got in here, you say, on the 7th. When did you go to the hospital after that?

A. I went on the 14th.

Q. Why was it that you remained so long? Why did you not go to the hospital sooner?

A. I wrote up home, and I wanted to get letters to see if I could not get up to Port Townsend, because I would be nearer my folks.

Q. You wrote to them? A. Yes, sir.

Q. You went into the hospital on the 14th?

A. Yes, sir.

Q. How long did you stay there?

A. It was months.

Q. About how long? A. About eight months.

Q. Who were the attending physicians there—the physicians that attended you? A. Dr. White.

Q. And Dr. Wilson?

(Testimony of Matthew Bridges.)

A. Yes, sir, and Dr. Gassaway

Q. Dr. Gassaway is the chief? A. Yes, sir.

Q. And the others were assistants? A Yes, sir.

Q Who attended you first—Dr. Wilson?

A. Yes, sir; he was the first man.

Q. How long did he attend you?

A. Two months, or two and a half.

Q. And then Dr. White? A. Yes, sir.

Q. These two men, Dr. Wilson and Dr. White, had immediate charge of you? A. Yes, sir.

Q. When was your leg taken off?

A. It was taken off on the 16th of October.

Q. It was during all of this time—you went in on the 14th of May, until the 16th of October—they were trying to save your leg, were they? A. Yes, sir.

Q. What sort of treatment had you there, as to diet, at the hospital?

Mr. ANDROS.—How is that material, what his diet was at the hospital? We are not responsible for that. I suppose they treated him in a proper manner.

Mr. SULLIVAN.—That is exactly it.

Mr. ANDROS.—If they did not, we are not responsible for that.

Mr. SULLIVAN.—His system needed nourishment when he was hurt to keep his blood pure.

Q. I want to know, generally speaking, what sort of food had you at the hospital, what diet?

Mr. ANDROS.—We object to that, as immaterial.

The COURT.—I do not see that it is material. I assume that he had proper food at the hospital.

(Testimony of Matthew Bridges.)

Mr. SULLIVAN.—Yes, rich, nourishing food.

The COURT.—I should suppose that is what they would have given him.

Mr. SULLIVAN.—Q. You know the two bones in your leg, one called the tibia and the other the fibia: Were they both broken? A. Yes, sir, both broken.

Mr. SULLIVAN.—I do not suppose your Honor wants me to go into the question particularly of whether he suffered pain?

The COURT.—No.

Mr. SULLIVAN.—Q. About any conversation between you and the captain touching the expediency or the propriety of going into any port at all: Did you hear any talk about that?

A. No, sir; I hear my shipmates talk about that; that he ought to have put me into port—

Mr. ANDROS.—Stop there. Never mind that.

Mr. SULLIVAN.—Q. I mean at the time after the accident. A. After the accident.

Q. The captain had nothing to say to you?

A. No, sir.

Q. Or you with him? A. No, sir.

Q. You do not know exactly where you were except from hearsay—where the ship was? A. No, sir.

Q. Was your health in perfect condition, as far as you knew, before this injury?

A. Yes, sir, good health right along.

Q. Any disease or anything the matter with you?

A. No, sir.

Q. In perfect health? A. Yes, sir.

(Testimony of Matthew Bridges.)

Q. What was your age? A. I was twenty.

Q. Can you give it to us a little nearer, whether you were near twenty-one?

A. I was nearer twenty-one, going on twenty-one.

Q. How near twenty-one? A. Eight months.

Q. When were you twenty-one; last December?

A. Yes, sir.

Cross-Examination.

Mr. ANDROS.—Q. About what time was it when you first went out on deck that you say you did, on crutches, with the assistance of your shipmates? A. Sir?

Q. What day of the month was it that you first went out on deck with crutches, with the aid of your shipmates, as near as you recollect?

A. That is, that I went out without the aid of my shipmates?

Q. No, when you first went out.

A. The 8th of April.

Q. You went out after that every day when the weather was suitable?

A. Yes, sir; I could get outside the door, and that was all; that is, if I got help.

Q. After a while did you go out without the assistance of your shipmates?

A. No, sir; I always had to have help.

Q. From the 8th of April until you arrived here, you went out every day when the weather was suitable for you to go out on deck?

A. Yes, sir; when I felt well enough to get out.

Q. What day was it that you arrived here, do you recollect? You stated it, but I have not got it down.

A. The 7th or 8th of April.

(Testimony of Matthew Bridges.)

Q. Where did you stop on shore after you were paid off? A. I stopped at the Sailor's Home.

Q. How soon after you arrived here was it that you were paid off—the next day?

A. Yes, sir; I believe it was; a couple of days afterwards.

Q. Then I understand you to say, in respect to going into any port, or the ship deviating, going into any port other than San Francisco, you said nothing to the captain about it, and he said nothing to you about it? That is so, is it? A. Yes, sir.

Q. You were speaking of provisions. Is it not a fact that the captain put you on a diet as soon as you were injured, and gave you food from the cabin table?

A. No, sir.

Q. Not at all? A. No, sir.

Q. You are sure of that, are you? A. Yes, sir.

Q. Did not the steward bring you food from the cabin table? A. No, sir.

Q. Or from the cabin? A. No, sir.

Q. Was there not some special food cooked for you aboard that ship?

A. I don't know if there was. If there was, I never got any of it.

Q. I mean that you got.

A. I did not get any of it; any special food.

Q. I will ask you substantially the same question again: Is it not a fact that you had food sent to you from the cabin by the captain? A. No, sir.

Q. Brought to you by the steward? A. No, sir.

Q. Not at all? A. No, sir.

Q. Never once? A. No, sir.

(Testimony of Matthew Bridges.)

Q. After you received this injury, did the captain give you any medicine to take internally on any one occasion?

A. He gave me some salts.

Q. How soon after the injury was it that he administered some salts to you? Do you recollect that?

A. The next day about noon.

Q. The next day? A. Yes, sir, the following day.

Q. How frequently did the captain visit you? Did he visit you every day? A. About twice a week.

Q. Did he not visit you every day?

A. No, sir.

Q. Did not the steward of the ship come to you every day?

A. Every other day; sometimes two or three days' time.

Q. Did you ever send to the captain for anything that you did not get? A. Yes, sir.

Q. What? A. Vaseline, and salts, too.

Q. You sent for vaseline and salts that you did not get? A. Yes, sir.

Q. How many times did you send for salts when you did not get them? A. Twice.

Q. How many times did you send for vaseline that you did not get it?

A. I have always got the vaseline.

Q. I thought you said you sent for vaseline, and the captain would not furnish it to you?

A. No, sir; I did not say that. I say I sent for salts and vaseline to put on my leg.

Q. When you asked for salts, you got them, didn't you? When you sent to the captain for salts, you got them, didn't you?

(Testimony of Matthew Bridges.)

A. I did once. The next time I did not get any.

Q. How many times did you send for salts—more than twice? A. Twice or three times.

Q. Vaseline you always got when you sent for it?

A. Yes, sir; the steward furnished it.

Q. What else was there that you sent for to the captain that you did not get—anything?

A. No, sir; not that I know of.

Q. At the time you fell from the loft, what was the weather at that time—heavy weather?

A. Yes, sir.

Q. A gale?

A. I could not say it was a gale; it was blowing pretty heavy, though.

Q. Do you know how long that heavy weather continued?

A. No, sir, I don't know how long it did continue.

Q. Who was it that set your leg? The captain, assisted by whom? A. The captain tried to set it.

Q. Who assisted him, do you know?

A. I think the carpenter did.

Q. Did you see the carpenter there at the time that the captain was setting your leg or attempting to set it?

A. No, sir; I don't remember; I was told he was there, though.

Q. Do you know if the steward was there or not?

A. No, sir; I don't know.

Q. When the bandages were taken off your leg the first time, who took them off? A. The captain did.

Q. He always took them off, did he not?

A. He took them off the the first and second time.

Q. Was he not present every time they were taken off? A. No, sir.

(Testimony of Mathew Bridges.)

Q. How many times were they taken off when the captain was not present? A. A good many times.

Q. Who took them off then—the steward?

A. No, sir; my shipmates or me.

Q. Do you know where any of the crew of that ship are now that were aboard that ship at that time?

A. No, sir.

Q. You have never seen any of them since you left the ship, have you? A. No, sir.

Mr. SULLIVAN.—Q. That is, since you have been to the hospital? A. Yes, sir.

Mr. ANDROS.—Q. I mean after you went to the hospital, whether you have seen them on shore?

A. No, sir.

Q. Did you ever send for the captain to come and see you when he did not come? A. No, sir.

(A recess was here taken until 2 o'clock P. M.)

Afternoon Session.

CHADWICK THOMPSON, called for the claimant, sworn.

Mr. ANDROS.—Q. Were you the master of the ship "Iroquois" at the time the accident happened to the seaman on board the vessel, who fell from aloft and was injured? A. I was.

Q. How long have you been a master mariner?

A. About four years.

Q. What was the tonnage of the ship "Iroquois"?

A. 1997.

Q. At that time did she have a cargo on board?

A. Yes, sir.

Q. Of what kind of merchandise?

(Testimony of Chadwick Thompson.)

A. General merchandise.

Q. What amount in tonnage?

A. About 2,900.

Q. Whereabouts did this accident take place in respect to latitude and longitude?

A. It took place in latitude 56° 50′ south, and about 67° 36′ west; somewhere in that neighborhood.

Mr. SULLIVAN.—Q. What was the longitude?

A. 67° 36′, about that; right off Cape Horn.

Mr. ANDROS.—Q. At what time of day did it take place?

A. About 3 o'clock in the afternoon.

Q. What was the weather at that time—heavy?

A. A strong westerly gale.

Q. At that time had you passed to the westward of Cape Horn?

A. We were right off the Horn; we passed the Horn in the morning.

Q. You passed the Horn that morning?

A. The wind headed us off. We were legging to the southward on the starboard tack.

Q. You were bound from New York to San Francisco at that time? A. Yes, sir.

Q. What time did you sail from New York, about?

A. We sailed from New York about the 25th of December.

Q. And arrived in San Francisco about what time?

A. About the 7th of May.

Q. 1900? A. Yes, sir.

Q. A year ago last May? A. Yes, sir.

Q. Bridges was an able seaman? A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. And he fell from where?

A. From the mainyard.

Q. What injury did he receive at that time?

A. He broke his leg and ribs; two of his ribs were broken.

Q. How soon after he fell was it before you rendered him assistance; such assistance as you could?

A. He was carried into the carpenter shop, and as soon as I received word of it, I went to the carpenter shop, and as soon as we could get the splints and other necessary things to set his leg, it was done.

Q. At the time that he fell, where were you—on deck or below? A. On the poop; on the weather side.

Q. Did you see him when he fell?

A. No, sir; I did not see him when he fell.

Q. You did not know of it until it was reported to you?

A. I did not know of it until the mate sent me word.

Q. Who assisted you in setting the leg, if anyone?

A. The steward, carpenter and cook.

Q. Whereabouts was his leg broken? Below the knee?

A. Below the knee.

Q. Did you determine at that time whether both or only one bone was broken?

A. Both bones were broken.

Q. Then you proceeded to set it?

A. Yes, sir; I bathed it with hot water and set it, and put the splints on.

Q. And bandaged it, I suppose?

A. Bandaged it tight.

Q. Having done that, where was he carried to?

A. He was taken to the forecastle.

Q. And what disposition was made of him when he

(Testimony of Chadwick Thompson.)

was put in his bunk? How did you arrange his laying or position, if you did?

A. I arranged that his leg should be elevated, to keep the blood from going down into the leg.

Q. How did you do that?

A. By putting a box at the foot of his bunk, and putting his leg up upon the box.

Q. Was the box covered with anything?

A. Yes, sir; it had pillows on it, clothes and things like that.

Q. Are you enabled to point out the place on the chart where that accident took place—about?

A. Yes, sir.

Q. Will you kindly look at this chart marked "South Atlantic Ocean, Sheet 1. Lower Part," and state what it is a chart of generally. This is a chart of the lower part of the South Atlantic? A. Yes, sir.

Q. And runs down off Cape Horn?

A. It runs from the River Platte to —Cape Horn.

Q. Can you designate, and if you can, mark the place, where the accident took place?

A. Right here (pointing).

Q. Mark it with the letter "A."

A. Yes, sir. (The place where the accident took place is marked with a letter "A.")

Q. From that point, how far is it to Port Stanley?

A. About 480 miles.

Q. After having placed the man in the forecastle, what, if anything, did you do in respect to giving him any special diet?

A. I administered salts, and gave the steward instructions to give him gruel and mush, and things like that.

(Testimony of Chadwick Thompson.)

Q. Do you know whether that was given to him or not? A. Yes, sir.

Q. For about how long a time was he fed or furnished with gruel and mush?

A. That was given to him for about a month, and there were other things from the cabin table that were given to him as well; that were cooked for the cabin and were given him.

Q. Is it true that he did not have anything at all from the time he was injured, except his regular forecastle food? A. No, sir, it is not true.

Q. Did you make any entry in your official log as required by the statute, of this injury? A. I did.

Q. Will you state what book this is which I now hand you (handing)?

A. It is the official log of the ship "Iroquois."

Q. Of the voyage upon which this accident happened?

A. Yes, sir, of the voyage from New York to San Francisco.

Q. Is there an entry made there of this occurrence?

A. There is an entry made at page 44.

Mr. ANDROS.—I will offer this entry in evidence. It is in the official log, which is required by the statutes to be kept.

Q. Is that in your handwriting, Captain?

A. Yes, sir. It is signed by the mate and Mr. Bridges.

Q. I notice here "Matthew Bridges—his mark." In whose presence was that mark made—in yours?

A. In my presence and the mate's presence.

Q. When did you make this entry? On the voyage, before you got here? A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. Are you able to state how long it was before you got here that you wrote up this entry?

A. It was wrote off and on from the time of the accident.

Q. At different times? A. Yes, sir.

Q. Just read that entry.

A. (Reading:) "Friday, February 23, 1900, 4 P. M. Latitude 56-50 south."

Mr. SULLIVAN.—The statute requires that the entry should be made within twenty-four hours after the event.

Mr. ANDROS.—At any time before the voyage ends.

A. This was made off and on from the time of the accident; what was done at the different times.

Mr. SULLIVAN.—I will not make any objection.

The COURT.—When he says "off and on," he means the different entries in the book in relation to the event, not this one.

Mr. SULLIVAN.—This one.

The COURT.—Do you mean to say that one entry was made off and on at different times?

A. Yes, sir, as it comes here. When I took the splints off, I entered that. It was signed at the one time, afterwards. It was not signed, until after it was written, before the ship arrived here.

The COURT.—I understand he made the entries from time to time of the different events as they came along. (Addressing the witness.) Or do you mean to say that sometimes two or three or four months after that, you wrote all those different entries?

A. No, sir.

The COURT.—The book will show for itself. Let me see whether the book shows. (After examination.) There are two entries there.

(Testimony of Chadwick Thompson.)

Mr. SULLIVAN.—I have no objection to this all coming in, and everything else in connection with the case, not as being evidence itself, but simply as a history of the case. If he put it down from time to time I have no objection to that coming in, and anything else, from his own memory. It does not control anybody; only it is historical. If the man is truthful, it is all right.

Mr. ANDROS.—I care nothing about the entries there.

Mr. SULLIVAN.—Of course, my observation is that when he makes an entry the statute would require him, if it be pertinent, to read it over at that time to the man and have him sign it. He made the entries at different times, and then finally he has the man sign it, or somebody sign it. Of course that is a matter of argument. We are proceeding on the proposition that it is not very material at all, if the man be truthful, when he made these things, giving his best judgment. I do not ask for any case to be tried in that way but it does not prove itself. That is all I mean.

The COURT.—Let us proceed.

Mr. ANDROS.—The object is to show that he complied with the law. The law says he shall make an entry of any injury or sickness of a seaman. I put that in to show that he complied with it, and all the facts, or I can prove it by him aliunde, if necessary.

Mr. SULLIVAN.—At or about the time of the occurrence. He did not read them over until two or three months afterwards.

Mr. ANDROS.—Q. Read the entry captain. You have commenced.

A. "Friday, February 23, 1900, 4 P. M. Latitude 56-50. Longitude 67-36 west. While furling mainsail, sea-

(Testimony of Chadwick Thompson.)

man Matthew Bridges fell from mainyard, and broke his leg and hurt his left side. As nothing carried away to cause his falling, he lost his balance. I set the leg and bandaged the side, and administered salts and regulated his diet." That is all in that entry. "March 30th. Removed the splints. Washed leg, and rubbed with liniment. Put splints on again and bandaged tight. The leg seemed to be knitted all right, with the exception of sores breaking out on the leg, so I have had to take bandages offi and dress sores with vaseline occasionally." Signed "Chadwick Thompson, Master. Matthew Bridges, his mark, and Charles Jerk, First Officer,"

Q. Now, captain, after the man was put into the forecastle, after he had been taken from the carpenter shop, and his leg had been set—before that, could you tell whether the bones were brought together by the examination which you made in setting the leg?

A. Yes, sir; to the best of my ability, the bone was in proper shape when I bandaged it and put his leg together.

Q. Having placed him in the forecastle, how long after that was it before you visited him again?

A. I visited him every two or three days from then on.

Q. What, if any, inquiries did you make of the steward or anyone else as to his condition on the days when you did not visit him?

A. I asked him every time I went in there how he was getting on, if he had everything he wanted. He said he was getting along all right. He seemed to be contented; that he had everything he could wish.

Q. State whether you did or did not furnish him with everything he requested to be furnished?

(Testimony of Chadwick Thompson.)

A. I did; anything he asked for, he got.

Q. He stated this morning that he sent for salts on one or two occasions, which he did not get. How was that?

A. He got everything he sent for. In fact he did not need to send for anything, because I went to the forecastle and asked if he wanted anything. When he wanted anything, he got it. He did not need to ask for salts. I asked him if his bowels were working and everything like that, to see if he was in proper condition. When he said they were not working, I gave him salts. I considered it my place to attend to that. He did not need to ask for anything like that. He was not given occasion to.

Q. How long after the accident, and after you set his leg as you thought, was it that you took off the bandages to examine the leg?

A. About five or six weeks.

Q. What was the reason that you did not remove them before?

A. Because I did not think it was safe to take the bandages off. I had to give the leg time to knit, and the bones time to knit.

Q. State whether you were apprehensive that if you took off the splints and bandages too soon, the bones might separate? A. Yes, sir.

Q. At the time of taking off the bandages, did you examine the leg for the purpose of ascertaining whether apparently it was knitting or had knit?

A. Yes, sir, I took the bandages off myself, and found the leg was improving, and seemed to be in a pretty fair condition, with the exception of sores and blotches, with sores on the leg. I thought it might be on account of

(Testimony of Chadwick Thompson.)

the blood settling there, like blood vessels, or blood blisters, rather.

Q. What did you do with respect to those if anything?

A. I washed the leg with warm water and a little carbolic acid in to purify it, and dressed it with vaseline.

Q. From thence forward, how often did you take off the bandages for the purpose of examining the leg?

A. For about three weeks I dressed it pretty near from one to two days.

Q. In the same way in which you have described?

A. Yes, sir, by taking the bandages off, washing the leg and rubbing it with liniment; that is, where there were not any sores, and where there were sores, I dressed it with vaseline.

Q. You have spoken of having given him some soft kind of food. How long was it before you desisted giving him that, if you did at all; that is, how long before you stopped it?

A. I think I must have given him that diet until after I took the splints off, to the best of my memory. I think I gave it to him off and on pretty nearly all the way, different things.

Q. What request, if any, did he ever make of you for different kinds of food?

A. I don't think he ever made any request of me at all. I don't remember him making any request at all for any other kind of food. He seemed to be satisfied with what he got. I remember giving the steward a can of milk every four or five days to make his gruel with, condensed milk to use for that purpose together with corn starch and stuff like that. That was given to the steward, and my instructions were to use it as food for that man.

(Testimony of Chadwick Thompson.)

Q. Now, at the time that he was injured; that is, at the time when you set his leg: What was his condition in regard to being conscious or unconscious at the time?

A. He seemed to be conscious. He was talking to me while I was setting his leg.

Q. After that was there any time that you were aware of when when he was unconscious?

A. No, sir, I don't think he was unconscious at all at any time.

Q. If he was, you do not know it? A. No, sir.

Q. How long was it before he was able to go out on the deck, with the aid of crutches?

A. About a week after I took the splints off the first time.

Q. And he went out how often?

A. Whenever the—weather permitted for him to go out.

Q. When he commenced going out, did that continue up until the time he arrived here?

A. Yes, sir. Before he arrived here he was able to go out on deck, and walk around the deck a little on crutches. Of course he had to have somebody help him out of his bunk. When he got on his crutches, he could move around.

Q. You have stated it to be about 480 miles from where he was injured to Port Stanley?

(Testimony of Chadwick Thompson.)

A. Yes, sir.

Q. What kind of weather was it at this season of the year, whether it was steady or constant weather, or whether it was changeable?

A. It was changeable from fine weather to heavy gales to the westward.

(Testimony of Chadwick Thompson.)

Q. At that time how were the prevailing winds, whether they would be head winds as you were going from Port Stanley bound west; what would be the kind of winds; head winds or fair winds?

A. Head winds.

Q. How many times have you been around Cape Horn?

A. I have been around Cape Horn sixteen times.

Q. As master and seaman?

A. As master and seaman, yes.

Q. As a seaman, are you able to form any judgment as to the length of time it would have taken if you had gone to Port Stanley, to have gotten back to the place where you had turned around to lay your course back?

A. That is pretty hard to tell. It is kind of difficult to make a passage, that is, to get from there around Cape Horn. There are generally westerly winds, and it is pretty hard to beat in heavy weather. The chances are it would take from three or four weeks to make that distance, and coming around the Horn we generally hug the Patagonian shore, and come through the Straits of Lamar, or around Cape St. John. We do not go outside of the Falkland Islands, because we have so much further distance to beat. We know what weather to expect there.

Q. Would the wind have been fair for you to have gone to the Falkland Islands at the time of this accident? A. Yes, sir.

Q. Are you able to form any judgment as to how long it would have taken you probably to have got to the Falkland Islands?

A. I might have got there in about three or four days.

Q. Suppose you had gone in to Valparaiso. How long would it have taken you to reach Valparaiso, assuming

(Testimony of Chadwick Thompson.)

that the wind remained about as it was then or as it turned out to be afterwards, the wind and the weather generally?

A. That is pretty hard to tell. I might have got to Valparaiso in about a month, it may be inside of a month.

Q. If you had borne away from Valparaiso, and gone the shortest route that you could safely or properly go, how much would you have gone out of your regular course when bound for San Francisco?

A. I would have had to have gone out about 500 or 600 miles or so, out of the line of my course.

Q. Bearing away from where? From where the injury took place or bearing away after you arrived near the longitude of Valparaiso?

A. I could not shape my course for Valparaiso until I got around the Horn.

Q. After getting around the Horn—when you say "around the Horn" what do you mean?

A. From, say, about 80° west longitude and 50 south.

Q. You had already, when this accident happened, just passed the Horn?

A. We had passed it and were heading to the southward. The wind headed us off and did not permit us to get any further.

Q. Any further to the westward? A. Yes, sir.

Q. If you had gone to Valparaiso, taking the best course that you could to have got in there, about how far, in your opinion, would it have lengthened your voyage as to distance?

A. That is pretty hard to figure on. I do not know. The nearest I came to Valparaiso at any time was within 600 miles.

(Testimony of Chadwick Thompson.)

Q. You would have had to travel that 600 miles to Valparaiso, and 600 miles back again?

A. Yes, sir.

Q. To have got to your place of departure?

A. Yes, sir.

Q. What sort of a harbor is Valparaiso to make—easy?

A. I have never been in Valparaiso. I don't know but very little about it, except what I have read.

Q. Have you laid out on one of these charts the course which you steered after coming around the Horn?

A. Yes, sir, I have.

Q. How did you make up the course—from your log-book? A. Yes, sir, from my own chart.

Q. Look at this chart marked "South Pacific Ocean. Sheet 1. Lower Part." That embraces Cape Horn, too, does it not? A. Yes, sir.

Q. But not the Falkland Islands?

A. No, sir; they are embraced here (pointing).

Q. Let me ask you, what do these marks here indicate where they cross each other?

A. They indicate each day's run, and down here is where the accident happened. That is the 23d day of February. Then the wind headed me off, and I had a heavy gale of wind, and I laid to here. The next day I was over here. I managed to get up to the Cape, and legged back again.

Mr. SULLIVAN.—You were thrown to the eastward how many miles? A. Fifty miles.

Q. You were thrown 50 miles to eastward from the 23d?

A. Yes, sir; I was here on the 25th (pointing). I was blown to the point marked "25" on the 25th.

(Testimony of Chadwick Thompson.)

Mr. ANDROS.—Q. Where did you go next?

A. I got here (pointing). I did not make hardly anything that day.

Q. The next day?

A. The next day I was over here.

Q. How much did you make that day?

A. One hundred and thirty miles—one hundred and twenty-seven miles.

Q. That is up to the point marked "27"?

A. Yes, sir.

Q. Was the course laid out on that chart the regular course?

A. About as near as the wind would let me go.

Q. And those marks there indicate the date when you were at certain points and the distances you ran?

A. Yes, sir.

Q. Now look at the chart marked "South Pacific Ocean, Sheet 1," and state whether your voyage is continued on that?

A. Yes, sir, this is the upper part.

Q. This is a continuation of your voyage from the other sheet, the lower part of Sheet 1?

A. Yes, sir.

Q. Where is Valparaiso on this?

A. It is here, right there (pointing).

Q. And the figures on this chart indicate the days, from day to day, and the distances run?

A. Yes, sir.

Q. What other ports were there, if any, that you could conveniently or properly have gone into on the South American coast?

A. No port that I know of.

Q. Why could you not have gone into some of the

(Testimony of Chadwick Thompson.)

ports in the southern part of South America above Valparaiso?

A. I did not think it necessary to go into any port.

Q. At the time that you were in the neighborhood of Valparaiso—when I say "in the neighborhood," I mean so that you could lay the course for Valparaiso—what was the condition of his leg then, in your judgment? Was it apparently getting along all right, or otherwise?

A. Entirely getting along all right. I thought the leg would be all right when he got there.

Q. From any examination which you made of it, did you come to any conclusion as to whether you ought to bear away for some other port?

A. No, sir, I did not.

Q. Did you think anything about it at all?

A. Yes, sir. In fact, I did not think it necessary to put away. I did not see any need of it. I did not think he could get any better treatment than what I could give myself, at the time.

Q. At the time you were of opinion that the leg was getting along and knitting successfully, were you?

A. Yes, sir.

Q. In respect to your forecastle: What kind of forecastle was that in respect to personal comfort of its inmates, whether it was well ventilated, warm, or how was that? A. It was well ventilated.

Q. How was it in respect to being dry and warm?

A. It is a good forecastle.

Q. How large was it in dimensions?

A. About 18 foot in length by about 18 feet square. About 6 feet 6 high.

Q. What did you say the height was?

A. About 6 foot 6.

(Testimony of Chadwick Thompson.)

Q. The libelant stated that he used one of the lower bunks. How far would the bottom of that bunk be from the floor of the deck of the forecastle?

A. It would be about 2 foot.

Q. After the accident happened at that time, you have stated there was a heavy breeze or heavy weather. How long did that weather continue?

A. It continued for about a week after the accident.

Q. And after that what was the general condition of the weather until you got into latitude 50 on the Pacific side?

A. I don't think I was much more than a week getting to 50. From that I had pretty favorable weather; from strong breeze to heavy gales off and on.

Q. Such weather as is usually experienced off Cape Horn at that season of the year? A. Yes, sir.

Q. Off Cape Horn after passing it to the westward?

A. Yes, sir.

Q. Did he or not make any request of you to go into any named port or any place? A. No, sir.

Q. About how long after the accident was it and after you took the bandages off the first time that you continued to dress his leg, or see it dressed, personally yourself?

A. About two or three weeks; then I would go off and on every three or four days after that.

Q. What directions did you give, if you gave any, to anyone else to look after the dressing of his leg?

A. I gave the steward directions to dress his leg, to wash it with warm water and dress it with vaseline, and from there on up to the last.

Q. You may state whether or not the injured man made any complaint to you in respect to it not being attended to?

(Testimony of Chadwick Thompson.)

A. No, sir, he made no complaint. He seemed to be contented, when I asked him if he felt all right, and was satisfied. He said that he was; he was perfectly contented; that he was getting everything that he wanted.

Q. I think you said you arrived here on the 7th or 8th of May? A. The 7th of May.

Q. How long after the arrival here was it before he was paid off?

A. He was paid off on the 8th of May.

Q. Do you know of your own knowledge what time it was that he went to the hospital, or only what you have heard? A. Only what I have heard.

Q. After he was paid off, did you ever see him again afterwards until you saw him here?

A. No, sir, I have not seen him until I saw him here.

Q. Until you saw him here, do you mean?

A. I saw him on the street as I was coming in here, that is all.

Q. From that time, when he was paid off, you had not seen him until you saw him here this morning?

A. Until to-day.

Q. In front of the building here? A. Yes, sir.

Q. When was it that you first had any information or heard he was making any complaint in respect to his not being taken into these ports which I have mentioned, Valparaiso or the Falkland Islands?

Mr. SULLIVAN.—I do not think that is material.

Mr. ANDROS.—It is for another purpose.

A. Not until I received a letter from his lawyer.

Q. That is after you arrived here on this present voyage?

A. After I arrived here on this present voyage, yes.

Q. When did you arrive here, about?

(Testimony of Chadwick Thompson.)

A. I arrived here about the 13th of March.

Q. And that was the first time you heard anything about his being disabled or losing his leg, was it?

A. Yes, sir.

Q. Since you arrived here on the 7th of May, 1900, or about that time, have you seen any of the other seamen on board that ship or know where they are?

A. No, sir.

Q. What was the name of the first officer on that ship? A. Charles Jerk.

Q. When did you last know of his whereabouts—last see him?

A. The last I saw of him was when I left San Francisco.

Q. Did he go on that voyage with you?

A. No, sir, he did not; he left me here.

Q. Do you know where he is now? A. No, sir.

Q. Do you know where the steward is?

A. No, sir.

Q. What countryman was the steward?

A. He was an Austrian.

Q. Did he leave you here on the voyage ending the 7th of May? A. Yes, sir.

Q. And from that time you have not seen him?

A. No, sir.

Q. Have not seen him since? A. No, sir.

Q. I don't know where the rest of the crew are?

A. No, sir.

Q. Except this libelant? A. That is all.

Cross-Examination.

Mr. SULLIVAN.—Q. After you arrived here, Captain, on May 7, 1900, that was the date? A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. You remained here how long?

A. I was here about fifteen days.

Q. Then you went away? A. I went away.

Q. On a voyage? A. Yes, sir.

Q. You came back here when?

A. I came back here about the 13th of March.

Q. How many months afterwards?

A. Eight months; nine months, I guess.

Q. Then, according to the question Mr. Andros has just put to you, you learned that this man had a claim against the ship, or a pretended claim?

A. Yes, sir, about nine months afterwards.

Q. If any of the members of the crew could be called here to testify, could they tell anything more about this accident than what you have stated—than what you yourself have related here?

A. No, sir, I don't think they could tell any more than what I have related. The steward might be able to.

Q. The mate of the vessel kept the log-book?

A. Yes, sir.

Q. That is the ship's log? A. Yes, sir.

Q. And that records the various days' business according to the old system? A. Yes, sir.

Q. One day after another? A. Yes, sir.

Q. During the voyage? A. Yes, sir.

Q. That is in here (pointing)? A. Yes, sir.

Mr. SULLIVAN.—Will you leave that here, Mr. Andros?

Mr. ANDROS.—I do not know that there is any objection to it.

Q. Is there any objection, Captain, to leaving it here?

A. No, sir, there is no objection. There is nothing ex-

(Testimony of Chadwick Thompson.)

cept the weather that occurred and what was done aboard the ship.

Q. There is nothing there that you would require to take it to sea with you?

A. I don't know as I need to take it to sea. I should like to have it. If you want it, you can have it.

Mr. SULLIVAN.—You can get another for two bits.

A. That is full. I cannot use that any more, except to leave it by the ship.

Q. There is no reason why it should not be left here?

A. No, sir.

Q. Then we should like to have it kept here.

A. The official log-book, that has to go to the Commissioner.

Q. That is another thing. You can take that with you if you want to.

A. That goes to the United States Shipping Commissioner. If you want that one (pointing), as long as it is delivered back to the Shipping Commissioner, it is all right.

Mr. ANDROS.—Q. Do you mean the Shipping Commissioner here? A. Yes, sir.

Mr. SULLIVAN.—Q. The only entry you made in reference to the accident in the official log-book is the one contained here on page 44? A. Yes, sir.

Q. That is the only one? A. Yes, sir.

Q. That entry is in your handwriting?

A. Yes, sir.

Q. Is that Mr. Jerk's signature?

A. Yes, sir, the first mate's signature.

Q. It looks so much like the rest that that is why I asked you. A. This here (pointing)?

(Testimony of Chadwick Thompson.)

Q. Yes.

A. It does not look anything like that. I wrote that and I wrote this (pointing).

Q. You wrote that all out yourself?

A. I wrote that all out myself.

Q. Then you took it into the forecastle where this man was?

A. No, sir; I had him come to the cabin to sign it. I had the mate in the cabin at the time I read it over to him.

Q. It is headed "February 23d"?

A. Yes, sir.

Q. Do you know what time you wrote that?

A. I wrote it from time to time after the accident. I wrote this a day or so after the accident.

Q. Look at that entry there on page 44 of the official log. That is all written at one time, is it not?

A. No, sir.

Q. In your handwriting? A. No, sir.

Q. Not drawn up at one time?

A. No, sir; this was written from here to there. I left that until March 30th, or a little after March 30th.

Q. From February 23d, as it appears here, down to March 30th. You think you wrote that on February 23d?

A. I think I did; I am pretty sure I did.

Q. The day of the accident?

A. Not the day of the accident; a few days afterwards. It was not more than three or four days afterwards.

Q. Then you say that the entry beginning March 30th was written when?

A. That was written just before I arrived here when I had this man sign it—before I had him sign it.

(Testimony of Chadwick Thompson.)

Q. The whole passage was not written at one time?

A. No, sir.

Q. He made his mark? A. Yes, sir.

Q. That is the only entry in the book?

A. That is the only entry in the book.

Q. What do you mean when you say you wrote that on February 23d? I do not say that you wrote it the same day—you did not. You say several days afterwards you wrote that?

A. Yes, sir, about three or four days afterwards. At that time it was heavy weather and I had the ship to look out for. As soon as I had time I wrote it.

Q. And was there any particular reason for your writing this on this page 44, anything particular except the fact that he was hurt?

A. No, sir; according to law, it is my place to state those things in the official log. That is what the official log is put aboard the ship for.

Q. You have nothing in the book here. From your recollection, do you recollect when it was after the 23d that you looked at his leg first? Was it this day, March 30th?

A. March 30th; I mean taking off the splints.

Q. By looking at the leg I mean taking off the splints and examining his leg.

A. The splints were not taken off until March 30th; I did not think it safe to take them off.

Q. Then you put these down here about March 30th?

A. About that time.

Q. You put this entry in there? A. Yes, sir.

Q. Are you sure about that?

A. No, sir, not that. That was not put down until pretty near the time that I had him sign it. From there

(Testimony of Chadwick Thompson.)

on was put down just before he signed it. That was to finish up the statement in the log-book when I had him sign it.

Q. You did not put it down near about March 30th?

A. No, sir; I had that and jotted it down at the time the splints were taken off, for reference.

Q. What do you mean by using the word "regulated" in the upper part of this entry here, which was, as you say, taken down four or five days after the accident?

A. "Regulated his diet"?

Q. Yes.

A. That explains itself. I gave him the same as any sick person would, if your blood was out of order, to affect your blood. I would give you gruel and certain things like that, light food.

Q. Who did you authorize to regulate his food, or to see that a regulated diet was given him at that time?

A. I authorized my steward, and saw that he gave it to him.

Q. Was that the only time that you ever spoke to the steward about it?

A. No, sir; I spoke to him off and on, and asked him at different times if he was giving it to him as I told him.

Q. If this was four or five days afterwards—I am coming at that word "regulated," how it occurred you should put that word "regulated" down there four or five days after the accident?

A. Because I regulated his diet at the time.

Q. Did you say anything about regulating the diet a month or two afterwards? A. No, sir.

Q. You did not put it down anywhere?

A. No, sir, but I was doing it right along.

Q. You say that you made all this entry at the same time? A. I did not say anything of the kind.

(Testimony of Chadwick Thompson.)

Q. What did you say about it?

A. I said I made the first part of that entry, up to March 30th, three or four days after the accident, and the rest of it I made before he signed it.

Q. Do you recollect how long before he came in here it was that you requested him to sign it?

A. No, sir, I do not; about a week, I think.

Q. Now, you have been sixteen times around the Horn? A. Yes, sir, in that neighborhood.

Q. How old are you? A. I am 28 years old.

Q. How long have you been a master of vessels?

A. Four years.

Q. Does your uncle own the ship? A. No, sir.

Q. Have you ever been in Valparaiso? A. No, sir.

Q. Have you ever been in Valdivia, on the South American coast, south of Valparaiso? A. No, sir.

Q. Have you ever been in a place called Ancud on that coast? A. No, sir.

Q. Have you ever been into any port on the South American coast? A. No, sir.

Q. You knew that Valparaiso and these other ports there were mentioned on your chart as ports on the South American coast? A. Yes, sir.

Q. You knew you could have gone into any one if you had occasion to? A. I could have if I had occasion to.

Q. If business called you there? A. Yes, sir.

Q. You knew some of them had considerable population, according to history? A. Yes, sir.

Q. And probably surgeons, and all that sort of thing?

A. I don't know anything about that, except what I read of the places; that is all I know about it.

Q. You came, you say, within 600 miles of Valparaiso on your course to San Francisco? A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. Have you got anything here to show how the wind was from the time you left the Cape, after rounding the Cape, until you got above Valparaiso?

A. It is shown in the log-book.

Q. Was there anything to hinder your going into Valparaiso or any of these ports, except it being an expense to the owners, and being out of your line of course to San Francisco? A. Not that I know of.

Q. You are not a surgeon, are you?

A. No, sir, I am not a surgeon. I have no certificate or anything like that.

Q. You never have studied surgery or medicine?

A. Nothing except what we get in the medicine chest —a regular medical-book. We go by that.

Q. If you had your leg broken, you would go to your surgeon to attend to it?

A. I have had my leg broken and have gone to a surgeon.

Q. Do you know—I will ask you for hearsay evidence —how that man struck on that deck? His right leg was broken, the tibia and fibia both broken. Do you know how he struck on that deck?

A. I was not there when he struck.

Q. Did you have any conversation with anyone that saw him fall?

A. The cook was the one that saw him fall. I asked him how he fell, and he said he hit the coaming of the main hatch, struck the coaming of the hatch, fell down, and landed on his feet first.

Q. You made it your business to inquire about it?

A. Yes, sir.

Q. He did not strike his head? A. No, sir.

Q. Or it would have killed him. He did not strike any part of his upper body?

(Testimony of Chadwick Thompson.)

A. No, sir. What I could get from the cook was, he fell and struck with his side on the hatch; his legs struck the deck at the same time. I suppose that is what caused his ribs to break and his leg to break.

Q. Then he hit on his right foot?

A. Yes, sir, I should think he did.

Q. That broke these two bones?

A. He hit on the coamings of the hatch one side of him.

Q. And his left leg and left body, as far as you could see, were not particularly injured at first?

A. Oh, yes, his ribs were broken.

Q. That is, on the right side?

A. That is, on the right side.

Q. You said you paid him off, or, at least, he was paid off about two days after he got in here?

A. The next day after he got in.

Q. Did he come ashore the same day that the vessel arrived?

A. Yes, sir, he came ashore the next morning. The ship docked in the morning, and he came ashore as soon as it got alongside the dock.

Q. You were not present when he was paid off?

A. No, sir.

Q. You simply sent up your papers and the official log-book here, and he was paid off some time on the 8th?

A. Yes, sir; I inquired of the Commissioner.

Q. Did you know anything about his going to the hospital? A. No, sir, not until I arrived here.

Q. After you arrived here, did you give him any document to entitle him to enter the hospital?

A. I don't remember that. The only thing is, the man's discharge would not permit him to get a permit.

(Testimony of Chadwick Thompson.)

Q. You don't recollect signing anything?

A. I always sign the discharge for every seaman.

Q. But no other paper?

A. I don't recollect signing anything else.

Q. When he did go, you knew nothing except from hearsay? A. That is all.

Q. You did not go out to see him? A. I did not.

Q. Now about this food: You did not give him any food with your own hands? A No, sir.

Q. Do you say that you saw the steward give him anything yourself, or simply directed him to do it?

A. I directed him to give it to him.

Q. Whether he got it or not, you do not know?

A. The steward told me he gave it to him.

Q. You don't know of your own knowledge?

A. I did not go there to see him eat it, no, sir.

Q. After the accident on the 23d of February, until the 30th day of March, you did not take off the bandages to see the condition of his leg, did you?

A. No, sir, I did not.

Q. After you took them off, as I understand you, you ordered a lotion—you ordered a washing of it?

A. I washed it myself.

Q. Then, again, subsequently, after the 30th, when did you do that same thing again?

A. Off and on, every two or three days, right along.

Q. You took them off to look at it?

A. I took them off, washed it, and put the bandages on. When I did not do it, the steward did.

Q. Could you not see, when you were taking them off, there was no union? A. There was a union.

Q. There was a union?

(Testimony of Chadwick Thompson.)

A. Yes, sir, his leg was as straight as it could be when I took them off.

Q. There was a union?

A. Yes, sir, I felt his leg right up and down.

Q. When you set the leg as you say you did, did you pull out one of these bones, the tibia or fibia—did you pull it out of its cavity, elongate it, stretch it?

A. I had the steward hold the leg above the break. I pulled on it and put my hand where the break was, until I felt it click into place, and then put the splints on.

Q. The blood was fresh, red blood?

A. It was not bleeding at all at the time.

Q. None at all? A. No blood there at all.

Q. It was a simple fracture? A. Yes, sir.

Q. You pulled it, you say?

A. I pulled it until I felt it go back in its place.

Q. You did not administer any chloroform or anything of that kind?

A. No, sir, he did not need any chloroform.

Q. The man yelled, of course?

A. He yelled a little.

Q. Then you covered it up, and did what you thought was proper, and left him there until the next day?

A. I put him in the forecastle. That was done in the carpenter shop. I put him in the forecastle, and I elevated his leg according to the doctor's book. He was supposed to keep his leg up. I would go in there every two or three days and ask him how he was getting on. I always instructed him to keep his leg up, elevated on that stand. I impressed it on his mind.

Q. When you got this lawyer's letter that you speak of, that was consigned to Williams, Dimond & Co.?

A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. Did anybody, to your knowledge, or did you yourself, go to the hospital to inquire about this man?

A. No, sir.

Q. He was in the hospital at the time you got this letter?

A. I don't know whether he was or not. I don't know anything about it.

Q. You do not know the date of receiving the letter?

A. It was somewhere about the 14th or the 15th of March; somewhere like that; about two or three days after I arrived.

Q. After the vessel came in here? A. Yes, sir.

Q. You say you instructed the steward to give him some kind of food, say mush or gruel?

A. Yes, sir; I gave the steward myself a can of milk every four or five days, and corn starch, a package of corn starch, so as to give to the man, to make the gruel.

Q. Whether he ever got it, you don't know?

A. Except when I asked the steward, he said he was giving it to him.

Q. You heard the man's statement this morning?

A. Yes, sir.

Q. About not getting anything except the regular food, such as sailors get? A. Yes, sir.

Q. And I may say here, I do not deem it very material. I am not charging the captain with a crime. Do you recollect, except from the log, how the wind was? You got around the Horn, and I understand you to say before you got around the Horn the wind was from the westward? A. Yes, sir.

Q. So that they were adverse winds to going around the Horn? A. Yes, sir.

(Testimony of Chadwick Thompson.)

Q. So that you could have got back to Port Stanley, which you say was 480 miles, in a few days if you had wanted to?

A. Yes, I guess I could; I don't know. I could not tell how they would be two or three days afterwards, a day or so after. I might have had a heavy gale then, and I could not have entered no port in the way the weather was. I might have laid outside that port four or five days before I got in. It was not a very nice place to go into, Port Stanley.

Q. Have you ever been there?

A. No, sir, but I have heard a good deal about it from people who have gone in, and read.

Q. It would not have required you to go in.

A. Yes, sir, you would have had to go in close enough to have had communication with the port.

Q. You do not know except from hearsay about that?

A. No, sir.

Q. You do not know whether you could have just gone in and laid off and on, and sent in a boat, or laid off and on, and did any business you wanted? You don't know about that? A. No, sir.

Q. You know it is a settlement of British troops, and there are a great many people there?

A. I know it is a pretty hard place for a ship to go in.

Q. You have been told that? A. Yes, sir.

Q. People do go there?

A. Yes, sir, they go there on a pinch.

Q. You came around the Horn. After you got around the Horn, had you not pleasant weather—after you rounded the Horn?

A. After I rounded Diagro Ramires, I had pretty good weather.

(Testimony of Chadwick Thompson.)

Q. You could have gone to the westward, or you could lay in towards the land, or gone right up, just to suit yourself? A. No, sir, I had easterly winds.

Q. Good weather?

A. Pretty favorable weather.

Q. You set all your sail?

A. Sometimes I would have all my sail set for twelve hours, every stitch of canvas; then I would be under lower topsails in a few hours. The weather is uncertain there. It is fine weather for ten or twelve hours, and then you will have a heavy gale of wind.

Q. There was nothing to prevent your going into any South American port if you wanted to, on account of the weather? A. No, sir.

Q. The severity of the weather? A. No, sir.

Q. Or its calmness? A. No, sir.

Q. How near do you come to Juan Fernandez on this sheet that is marked; how near did you come to that? That is a settled place?

A. There is nobody on that island.

Q. No one?

A. No one that has got any skill in surgical things, that I know of. It is about 300 miles from the coast—that is a rough guess.

Q. You could have touched there if you wanted to?

A. Yes, sir, I could have touched there if I wanted to. It would have lengthened my passage a little to do it. It was out of the way.

Q. You did not talk to this man, nor he to you about being put ashore there at any place for treatment to save his leg?

A. No, sir. I asked the man how he was getting along, if he thought he was getting along all right, and he said he thought he was. He seemed to be satisfied.

(Testimony of Chadwick Thompson.)

Q. Do you know where the first officer is now?

A. No, sir, I don't know where any of them are.

Q. When did you see him last?

A. Not after I left him here; I paid him off here.

Q. Mr. Jerk?

A. I paid him off when I arrived here.

Mr. ANDROS.—Q. On May 7, 1900?

A. Yes, sir; I have not seen him since.

Mr. SULLIVAN.—Q. When are you going to sea?

A. I am going to sea about next Tuesday or Wednesday, maybe before.

Q. Do you live in Maine?

A. I was born here in San Francisco.

Mr. ANDROS.—Q. You reside here when you are at home? A. I was born here.

Mr. SULLIVAN.—Q. I did not ask your age, Captain, I think. A. Twenty-eight, I told you.

The COURT.—You did ask him, and he said he was 28.

Mr. SULLIVAN.—Q. You could have got into Valparaiso if you were only 600 miles off; you could have gone in in less than five days?

A. That is pretty hard to tell up around that latitude; it is generally calm and light wind. By my log-book I did not make 30 miles a day in that latitude.

Q. On your route, in the way you were going, if you wanted to go to Valparaiso, you could have made it in that time?

A. I don't know I could have made any better time than the time I was making there.

(Testimony of Chadwick Thompson.)

Mr. SULLIVAN.—I will ask to have this log-book put in evidence.

The COURT.—Very well.

Mr. ANDROS.—I do not care.

Mr. SULLIVAN.—I will offer the log-book.

Redirect Examination.

Mr. ANDROS.—Q. You set his ribs, did you not, and it proved a success? A. Yes, sir.

Q. How many were broken—two?

A. Two ribs were broken.

Q. How long was it before you took the bandage off of his chest, if you put one on, for the broken ribs?

A. I guess I changed the bandage on those about the same time as I changed it on the leg, tightened it up. I think I remember the bandage got loose in the meantime, and I took it off and tightened it up.

Q. I mean, how long before it was disposed with?

A. The bandage was kept on pretty nearly until the time he arrived here.

Q. There was never any complaint but what his ribs were all right?

A. No, sir, there was no complaint about that.

Mr. SULLIVAN.—I offer this official log, too.

The Court.—That will have to go to the United States Commissioner's office, and you can get it at any time.

Mr. ANDROS.—Yes, it can be got at any time.

(The official log is marked for identification Libelant's Exhibit No. 1.)

(Testimony of H. K. H. Mitchell.)

Mr. ANDROS.—That is all the testimony we have for the present.

(The further hearing was then continued to a day to be hereafter set.)

Thursday, June 6, 1901.

H. K. H. MITCHELL, called for the libelant, sworn.

Mr. SULLIVAN.—Q. Where do you reside?

A. San Francisco.

Q. What is your business? A. Insurance.

Q. What kind of insurance?

A. Life insurance.

Q. How long have you been in that business?

A. Twelve years.

Q. What table do you use in estimating the longevity of persons applying for insurance in your business?

A. We use the American Table of Mortality.

Q. Is that one generally used by insurance companies? A. I think so.

Q. When you take those risks, are those selected risks or not?

A. They undergo a medical examination, which must be approved by the company.

Q. What do you say is the name of the company?

A. The American table of mortality.

Q. Look at this paper. Did you furnish us with that (handing)? A. Yes, sir.

Mr. SULLIVAN.—I ask to have this marked for identification.

(Marked Libelant's Exhibit No. 3.)

Q. What company are you connected with?

A. The Mutual Life Insurance Company, of New York.

(Testimony of H. K. H. Mitchell.)

Q. That is the oldest company in the United States?
A. Yes, sir.

Mr. SULLIVAN.—We offer this as showing the ages at which they calculate longevity of applicants applying for insurance.

Mr. ANDROS.—I object to the introduction of that slip. It does not purport to be issued by any authority, any person competent to make such a table.

The COURT.—The witness testifies that it is the American mortality table, and is in use by this Insurance Company. I will admit it.

Mr. SULLIVAN.—Q. Look at an applicant applying, say, at the age of 21: How many years is the expectancy of his life? A. 41.53.

Q. Say at 37. A. 30.35.

Q. 43. A. 25.99.

Q. Is that in addition to the years of their lives already past?

A. Yes, sir a person at that age is supposed to live that many years longer.

Mr. SULLIVAN.—We will offer this in evidence.

Cross-Examination.

Mr. ANDROS.—Q. Do you know by whom this table was compiled?

A. I cannot say.

Q. Is this a table compiled with respect to employment of persons—do you know anything about that—whether it is compiled with respect to their employments?

A. All I can answer in regard to that is, it is an official table that has been in use a great many years.

(Testimony of H. K. H. Mitchell.)

Q. When you say "an official table," what do you mean by "an official table"? Used in your office?

A. Used by The Mutual Life Insurance Company of New York, and I think by all the New York companies.

Q. Do you know whether it is or not?

A. No, sir, I could not say positively.

Q. Do you know anything about the data at all at which they arrived at these different years of longevity?

A. No, sir; that is an acturial calculation with which I am not familiar.

Q. Do you know whether this is calculated in respect to any employment of the person, of his business or occupation?

A. No, sir; I think it is simply based on a number of persons at a given age.

Q. That is, your idea is that they have taken a number of persons greater or less, at a given age, and ascertained how long they lived?

A. A thousand persons, I believe it is calculated upon, at each age.

Q. Irrespective of their occupations, and irrespective of their places of residence, I presume?

A. As far as I know.

MARK J. WHITE, called for the libelant, sworn.

Mr. SULLIVAN.—Q. What is your profession?

A. Doctor.

Q. Where do you reside?

A. At present at the Occidental Hotel.

Q. You are a surgeon and physician?

A. Yes, sir, I am a commissioned officer in the Marine Hospital Service.

(Testimony of Mark J. White.)

Q. How long have you been practicing your profession? A. Since 1897.

Q. How long were you connected with the Marine Hospital here? A. In this city?

Q. Yes. A. Since July 1st last year.

Q. Are you still connected with the hospital?

A. No, sir, I am at present on a special temporary duty in connection with the cleaning up of Chinatown.

Q. Do you know this man sitting here (pointing)?

A. Matthew Bridges?

Q. Yes. A. Yes, sir.

Q. The libelant in this case? A. Yes, sir.

Q. Where did you become acquainted with him, and when?

A. In ward D of the Marine Hospital in this city on August 2d of last year.

Q. Under what circumstances?

A. I was assigned to duty, in the care of the patients of that ward by the commanding officer at the station.

Q. Was he immediately under your care?

A. Yes, sir.

Q. What was he treated for by you?

A. He had recently been operated on for a fracture of the leg, an ununited fracture, a few days before I took charge of him, and I treated him for that operation, that is, the after treatment for the operation.

Q. How long was he under your care?

A. Off and on from August 2d of last year until October 15th or November—I forget exactly about how long.

Q. You say that his leg was taken off?

A. Yes, sir.

Q. Do you know when that occurred?

A. I think about October 15th.

(Testimony of Mark J. White.)

Q. By whom? A. By myself.

Q. At the Marine Hospital? A. Yes, sir.

Q. Before you had charge of him, who was the doctor who had charge of him, if you know?

A. I understood it was Dr. M. L. Wilson of the Marine Hospital Service.

Q. Where is he now?

A. I understand he is in Honolulu.

Q. He was connected with the Hospital?

A. Yes, sir.

Q. At the same time that you were?

A. Yes, sir.

Q. About what age is he? A. I presume 27.

Q. A regular surgeon and physician?

A. Yes, sir, he is a commissioned officer of the service.

Q. Could you tell, from your examination of the man's leg when the patient came under your charge, what had been done to him, what the treatment had been—from an examination of him?

A. Not the entire treatment. I could only see the superficial wound.

Q. Were you in the hospital during the time this man was there, from the time he came in until his leg was taken off? A. No, sir.

Q. Were you any of the time there during the time that Dr. Wilson was attending to him?

A. Yes, sir.

Q. Can you state whether Dr. Wilson had daily care of him?

A. The arrangement, I should explain, at the hospital is that every month the assistants change sides, from the medical to the surgical side. At the end of the month

(Testimony of Mark J. White.)

of August, Dr. Wilson, I believe, reassumed charge of the treatment of the surgical patients.

Q. Could you, from the examination that you gave of the man's condition, the condition of his leg, and all the surrounding circumstances, tell whether it appeared he had been properly treated in the hospital?

A. As I say, I only saw the superficial wound in his leg. I presumed he had been operated on as is shown by the history of the case.

Q. When you say "operated on," what do you mean by that?

A. That he had undergone a surgical operation; that he had been cut.

Q. In order to do what?

Mr. ANDROS.—If he knows.

Mr. SULLIVAN.—Q. If you know.

A. I understood for the relief—

Mr. ANDROS.—(Interrupting.) Never mind what you understood, but what you know.

Mr. SULLIVAN.—Q. From what you saw; if you can tell from the examination you made what had been done to his leg, with reference to curing him.

A. I could not tell from what I actually saw.

Q. Did anything about his leg indicate that he had not been properly taken care of? A. No, sir.

Q. Or the reverse—that he had been?

A. He looked as though he had been properly cared for.

Q. When you made the amputation in October, state whether or not that was a necessary thing to do at that time? A. Yes, sir.

(Testimony of Mark J. White.)

Q. What was its purpose?

A. To relieve him of a condition that was sapping his strength, and to put him in condition where he could recover and go about. It was absolutely impossible for him to recover with that leg.

Q. By "impossible to recover," do you mean impossible to live if you had not taken off his leg?

A. I believe if he had been left to himself, he would have died, undoubtedly.

Q. You say it was an ununited leg? The union of the bones had not taken place?

Mr. ANDROS.—He did not say that.

Mr. SULLIVAN.—I understood it was an ununited fracture.

A. I understood he was operated on for the relief of an ununited fracture of his leg.

Q. Can you tell, from the examination you made of the man during the time he was under your care, whether the bones had ever united from the time of the break?

A. No, sir; it was my opinion they had not when I inspected it.

Q. Was everything done at the hospital there for him in order to save his leg and life that could have been done, in your opinion?

A. Yes, sir, I myself did everything to do it.

Q. What kind of a fracture was this—a simple or a compound fracture?

A. The history of the case shows it was a simple fracture.

Q. Both the bones broken, the tibia and the fibia?

A. Yes, sir.

Q. And about how far below the knee?

(Testimony of Mark J. White.)

A. It was about midway.

Q. You know only from hearsay as to when it occurred, and how it occurred? A. Yes, sir.

Q. What was the condition of the man otherwise, his physical condition at the time you saw him, while he was under your care, touching disease or health?

A. As to some constitutional disease?

Q. Yes. A. Good.

Q. After a man's leg has been fractured in the way this man's leg was fractured, if he had been placed under a surgeon's care within three or four weeks, whether or not there would have been any difficulty in a union of the bones, in your opinion?

A. So far as any fact in my knowledge goes, I am unable to say that.

Q. But in your opinion as a physician and surgeon?

A. It is my opinion that the fracture in his case would have got well—would have healed.

Q. Do bones heal more readily at 21 than at a later period of life, and under favorable conditions, or the same conditions?

A. If I understand it, I am only a witness to give facts within my knowledge.

Q. Also as an expert?

A. I am not appearing as an expert. It is only to facts within my knowledge.

Q. I ask you that question as a physician and surgeon competent to express an opinion.

The COURT.—Q. Your knowledge of physiology would enable you to answer that question, I suppose?

A. Yes, sir, if I am to be taken as an expert wit-

(Testimony of Mark J. White.)

ness. I understand I am here merely to state the facts of the case and not to appear as an expert witness at all.

Q. You are a graduate of the medical college?

A. Yes, sir. If you say answer it, of course I will do so.

Q. Answer the question if you can.

A. The bones would heal more readily at the age of this man Bridges than a man of an older age.

Mr. SULLIVAN.—Q. When a person has his leg broken, whether or not the condition of rest is more conducive to the joining of the bones, or a stay of motion?

A. A condition of rest.

Q. In the hospital and in private practice, if a man's leg is broken, and the doctor has set his leg, and done what he thinks is proper in order to unite the bones, and the man has to perform, as he has to, the offices of nature, whether he is removed from the position he is placed in, or allowed to remain there and have those offices done for him while in a recumbent position?

A. If I understand your question, I should say, let him remain in a place where he could be at rest.

Cross-Examination.

Mr. ANDROS.—Q. Did you make a sufficient examination of his leg either before or after the amputation of it to ascertain whether the bones had commenced to knit at all at any time? A. Yes, sir.

Q. What did you discover in respect to that?

A. I discovered there had been no union, and both bones were extensively necrosed.

Q. No union at all in any portion of them?

A. No, sir.

(Testimony of Mark J. White.)

Q. What was the condition of the ends of them in respect to having thrown out callous?

A. No callous had been thrown out. The ends of the bones were dead, covered over by soft parts, soft issue.

Q. That was not exceptional, was it, in case of broken bones? A. No, sir.

Q. That occurs with more or less frequency, does it not? A. In ununited fractures.

Q. Are you able to state what the occasion of this throwing out of this soft tissue is, instead of throwing out the callous, to cause the bones to unite?

A. The bone was dead. The tibia and the fibia were both dead.

Q. Were you able to tell how long, and anything about the occasion of the death of these bones?

A. No, sir, I do not know how long the bones had been dead.

Q. You simply found them dead, and found they had not thrown out callous? A. Yes, sir.

Q. And simply thrown out some tissues?

A. The bone itself had not thrown out the tissue. The tissue came from the surroundings, soft parts.

Q. I understand you to say that is not an extraordinary thing to happen, the bones not throwing out the callous, that is, this condition of things happens with some frequency, more or less?

A. In cases where bones are dead, the bones will not throw out any new cells.

Q. How long does it take a bone to die? Can you tell that? A. No, sir.

Q. Is it not a fact that it not infrequently occurs that bones do not unite?

A. In my experience, it has not been.

(Testimony of Mark J. White.)

Q. What experience have you had with broken bones, so far as to numbers?

A. Possibly only from 1893 to the present time; from the time I became a student.

Q. What experience have you had in the fracture of bones from the time you graduated and commenced to practice?

A. I have not treated more, since I have been practicing medicine, than fifteen or twenty persons.

Q. And those were fractures of what bones?

A. Bones scattered over the body, the extremities of the body, legs, arms, and some ribs; a few cases of fracture of the skull.

Q. Did all those fractures that you speak of unite at once? I mean in the regular course?

A. Yes, sir; all except the fractures of the skull.

Q. I am not speaking of a broken skull, but of the leg and arms?

A. Of all the legs yes; they did.

Q. Do you know, as a fact, from your studies as a surgeon, that it does occasionally occur that the bones do not unite, even when they have proper treatment?

A. Yes, sir.

Q. Are you able to state why it is that they sometimes do not unite?

A. It may be on account of some constitutional trouble, syphilis or tuberculosis, or it may be from some local trouble, that is, from failure to put the bones in position, or from the interposition between the ends of the bones. The interposition of soft parts, such as tendons, muscles, blood clots, and foreign bodies.

Q. How long, under ordinary circumstances, is it before a bone begins to throw out its callous of the two

(Testimony of Mark J. White.)

ends of the bone, when they are put into juxtaposition, after the fracture?

A. In two weeks, and completed in from four to six.

Q. You are speaking now of simple fracture, are you? A. Yes, sir.

Q. When you are called upon to set a simple fracture, say a fracture of the leg or arm, how do you ascertain whether the bone has got into its proper place, that is, whether the two ends have been in juxtaposition to each other?

A. By grasping the upper and lower ends of the leg, and taking the measurements of the broken leg, and comparing the measurement of the leg with the measurement of the normal leg. If the outline of the broken leg seems clear and normal, it is presumed that the bones are in their position.

Q. Suppose it is the leg bone, where the flesh is not ordinarily very deep: Cannot you ascertain whether the ends of the bone have been brought together by manipulation and feeling?

A. I mean manipulation by using the hands, as I said just now, and in confirmation the X-ray might be used.

Q. Irrespective of the X-ray, you can ascertain by manipulation, as you have explained, whether the bones have been put in position with each other?

A. Yes, sir.

Q. In the case of a broken bone, the simple fracture of a leg or arm, do the bones slip by each other so as to pass free?

A. Yes, sir, if left to themselves; they may or may not.

Q. When the fracture first occurs, does that happen

sometimes? Do the ends pass by each other, so that they go into the flesh, or where do they go into?

A. The muscles contracting would pull the bones together so that they would pass like that (illustrating).

Q. When the bone is in that condition, that can be ascertained by feeling—by manipulation of the hands, can it not? A. Yes, sir.

Redirect Examination.

Mr. SULLIVAN.—Q. After the surgeon has set a broken bone, how long do you say he should leave it, or is it proper to leave it unexamined after he has bandaged it and put on the splints; how long before he makes an examination of it again to see whether there is a union taking place?

A. I myself examine it every four or five days, even though the leg seems perfectly comfortable.

Q. That is done to verify it?

A. Yes, sir, usually it is done by the X-ray so that the splints do not have to be taken away.

Q. Whether or not you keep up that examination from time to time?

A. Yes, sir, it is kept up for three or four weeks, until we see that the union has taken place.

Mr. ANDROS.—Q. What do you say is usually done with the X-ray?

A. When a fracture has dressed, from time to time, every three or four days, the leg is examined with the X-ray, to determine whether the bone has remained in position.

Q. If you have not any X-ray, what do you do then? Take off the splints or plaster cast, or whatever is put

(Testimony of Mark J. White.)

there to keep the bone in place? Do you take that off every four or five days?

A. Yes, sir, you take it off and look at it to see if it is in good condition.

Q. And that you could ascertain, I understand, by manipulation of the hands? A. Yes, sir.

Mr. SULLIVAN.—Q. Bryant's Work on Surgery is a recognized work used, and is considered as an authority in surgery by doctors, is it not?

A. What Bryant is that?

Q. Dr. Bryant of London—the American edition.

A. Bryant's Work on Surgery is known amongst physicians as an accepted book.

Q. Independently of the X-ray, which has come into use within a few years, would not a surgeon do exactly what you have said: Examime the condition of the leg and of the bandages, to see how it was going on?

A. I myself would.

Q. Would not surgeons generally do that?

A. I think it is customary, yes; that is, in simple fractures.

WILLIAM M. LAWLOR, called for the libelant, sworn.

Mr. SULLIVAN.—Q. You are a physician and surgeon? A. Yes, sir.

Q. Of how many years standing?

A. Since 1867.

Q. Been practicing ever since in your profession?

A. Yes, sir.

Q. Do you hold an office now under the State or the city?

(Testimony of William M. Lawlor.)

A. I am acting at the present time under the State Board of Health, as their agent in superintending the cleansing and fumigating of Chinatown.

Q. Have you had some experience in surgery?

A. Yes, sir. I was seven years and a half resident superintending physician of the City and County Hospital, and I practiced probably four years in Oakland in general practice. Then I was quarantine officer of the bay for twelve years and a half, with a general practice among shipping, and of course on shore.

Q. Did you ever serve in the Pacific Mail Steamship Company as surgeon?

A. Yes, sir, from September, 1868, to 1871, I was surgeon on the steamers running between here and Panama, and also to China. I made two trips to China, and the remainder I made on the steamers between here and Panama.

Q. After a simple fracture, say of the tibia and fibia, to the leg of a young man 21 years of age, in case he comes under a surgeon's care for treatment of that fracture within four weeks after the accident has happened, whether, in your judgment, the other conditions being favorable, that is too late to effect a cure?

A. It would depend at that time. After four weeks, there would be a union or malformation of some kind, that would require, if there was malformation in the union, the breaking up of the bone again to be reset. It would depend upon the nature of the treatment, the conditions that surround it; whether the bones were brought in juxtaposition, brought together; if not, there would be no union.

Q. Is it impossible that a union should take place, or

(Testimony of William M. Lawlor.)

improbable, at the end of four weeks, if put under a surgeon's care?

A. Other things being equal, a man's constitution being in proper condition, after having the proper surgical care, and with that age, there is no reason why there should not be union and perfect limbs.

Q. Though he is put under the surgeon's care at the end of four weeks after the fracture? A. Yes, sir.

Q. In a state of rest, is the condition more favorable for a union of the bone than in condition of motion?

A. Unquestionably. In order to get union of any kind, you must have absolute rest.

Cross-Examination.

Mr. ANDROS.—Q. I understand you to say, Doctor, that a simple fracture, if it is not properly set, or set at all, at the end of four weeks' time, there would probably be a malformation, or some other trouble, which would require some different treatment than the ordinary treatment of merely setting the bone?

A. Yes, sir, unquestionably, there would either be nonunion or a union with deformity.

Q. Then it would become necessary to break the leg over again, if it was a leg, and perform some other operation for the purpose of setting it properly?

A. Yes, sir.

Q. Then, in that case, it might readily unite, I suppose?

A. Yes, sir; other conditions being favorable, there would be no reason why it should not.

Q. When you speak of absolute rest, to what do you refer? Absolute rest, so far as the patient is moving himself around?

(Testimony of William M. Lawlor.)

A. No, sir; as far as the portion of the leg that is broken, for instance, if it is the leg, the leg where the fracture is, that portion of the anatomy should be absolutely at rest in order to have union.

Q. That is, it should not be moved?

A. Yes, sir, and that would naturally be required by the proper dressing and the proper splints.

Q. In respect to the broken leg being kept at absolute rest, you mean by that, as I understand, it must be kept in one position, that is, not moved around from one position to another by the patient himself, perhaps?

A. No, sir, the limb itself could be moved with the splints and all; for instance, in the handling of the patient, it is often necessary that the ordinary calls of nature should be attended to, and a bedpan used; the limb can be moved with the splints, and then, with the splints properly applied, the fracture is not disturbed.

Q. By absolute rest you except those occasions, when, in order to perform the offices of nature, it is necessary to move the limb, if the limb had been splinted, or whatever the operation may be, for the purpose of keeping it in place?

A. My idea of speaking of absolute rest was entirely in connection with the seat of the fracture itself.

Q. I so understood it, although I was not sure.

Redirect Examination.

Mr. SULLIVAN.—Q. In your practice, treating a man with a broken leg, and he of course desires to perform the operations of nature, do you take him out of the bed, or use the bedpan while he is lying in bed?

A. The pan is generally used in the bed. The facilities are so arranged that a man is not taken from his

(Testimony of William M. Lawlor.)

bed. All that depends entirely on the nature and extent of the fracture. An ordinary simple fracture, you use the bedpan, or some other facilities of that kind, in the bed, without taking the man from the bed.

Q. The reason being what? That if you move him out of the bed, what is the liability; it is liable to do what?

A. Moving a man from a bed, unnecessary handling, would naturally have a tendency to dissarrange the fracture. In other words, you want to avoid all possible movement of the body, so as to have the fractured bones remain in position, and be in a quiet state.

Q. Whether or not, after the first setting of the bone, it is a proper thing, or a usual thing, among surgeons, to examine the patient's leg thereafter, and if so, at what time after the first dressing?

A. After the first dressing, it is usually the custom to examine the leg in four or five days; any time within four or five days after the limb has been set, in order to ascertain if the portions of the union are in apposition; then, say, ten or twelve or fifteen days afterwards, in that neighborhood, after the second examination made, say about the tenth or twelfth day. That, of course, would entirely depend, in a great many cases, on the condition of the bandages. In the ordinary calls of nature, moving clothes and changing the bedding, the bandages are liable to be loosened, and very often have to be renewed and readjusted, and in readjusting it is the custom of the surgeon to examine the limb and to see whether the union has taken place properly, and the limb is in proper position.

Q. To see whether everything is all right?

A. Yes, sir.

(Testimony of William M. Lawlor.)

Q. If a young man of 21 is treated for a broken leg, within what time, if the treatment is proper, do you expect to look for a union, if he is in a healthy condition?

A. A complete union; an entire recovery?

Q. Yes.

A. From four to six or seven weeks.

S. H. PARKER, called for the libelant, sworn.

Mr. SULLIVAN.—Q. You are the Deputy United States Shipping Commissioner at this port?

A. Yes, sir.

Q. You have held that position how long?

A. Eight years, nearly.

Q. You are familiar with the wages that are paid seamen and officers sailing from San Francisco to various ports of the world, during that time, are you?

A. I am; I have a record of them.

Q. Have you got an account of them?

A. I have.

Q. Will you just open it and tell us about what the rate of wages is for an able seaman upon this coast?

A. Going to different ports is different wages; that is, in deep water, from here to New York or Philadelphia or London, the wages are very much different than to the Islands, or even to Australia and Asia.

Q. Give us an average.

A. How many years back?

Q. Have they varied much in the last eight years?

A. A good deal.

Q. Between what extremes?

A. From $25 a month to $40 a month.

(Testimony of S. H. Parker.)

Q. Going to those places?

A. That is, to the Hawaiian Islands. Around the Horn, they have got from $15 to $20 ever since June, 1897—the wages around the Horn are $20 for able seamen.

Q. What are the coast wages? A. $40.

Q. Average?

A. Average; in the last few months.

Q. I do not mean in the last few months, but the average for several years.

The COURT.—Q. On this coast they have ranged all the way from $25 to $40?

A. On the coast, they have not been lower than $30 for a long time. Going to Honolulu, they have ranged from $25 to $40. I will give them right through.

Q. I think it is sufficient just to give the extremes for ten years; the lowest and the highest; the range between these two. A. On the coast and Honolulu?

Q. Yes, sir.

A. Pacific Coasting trade for 1897 and 1898, for the twelve months, I have put them down and divided them up: I have put down the average wages of each month, and for the twelve months I have divided them up, and the average is $31.36. The Hawaiian Islands, for the same period, average $29.03. 1898 and 1899, Pacific Coasting trade, average $33.60. The Hawaiian Islands, $30.62. 1899 and 1900, Pacific Coasting trade, average $39.67. The Hawaiian Islands, $34.64.

Mr. SULLIVAN.—Q. What is the difference between what a second officer gets and an able seaman? Give your judgment from your experience?

A. The lowest is $40. They average from $40 to

(Testimony of S. H. Parker.)

$50. A second officer, going around the Horn, gets $40 to $50. To the Islands, the average rate is $45; very often $50. They are going up now pretty fast.

Q. On the coast here, generally, what is the difference between the second and first officer in wages?

A. Generally about $10.

Mr. ANDROS.—That proves nothing.

Mr. SULLIVAN.—Q. What does the first officer get?

A. In the Pacific Coasting trade they average $40.

Q. That is the second officer?

A. I am giving the whole wages. The A. B.'s averaging a few cents over $40, the first officer averaging from about $51.50 and the second officer $46. I have not figured those up. I have only got ten months of those in.

Q. The difference between the first and second officer is about $10, you think?

A. About $10. Sometimes it is only $5. Usually it is about $10. That is about a fair average.

Q. You have nothing to do with the masters?

A. Nothing.

Q. Do you know what they receive?

A. Only from hearsay.

Mr. ANDROS.—I object to hearsay testimony. I do not think it is material, anyhow.

The COURT.—I do not think we can have that.

The WITNESS.—That is only a private arrangement between the owners and the master.

Mr. SULLIVAN.—I do not think it is material.

A. They average over $35 to the Hawaiian Islands. The lowest was $35 that the able seamen get.

(Testimony of S. H. Parker.)

Q. You mean the average for the month?

A. No, sir, for the year.

Q. These are the monthly wages running through a year?

A. Yes, sir; I take all the articles for one month going to certain ports, and divide the number of articles into the total amount of wages that they pay a seaman, and that gives the average wages. At the end of twelve months, I add them up and divide them by 12, which gives the average for the year. That is in the report made to the Commissioner of Navigation every year.

Q. These are average monthly wages?

A. Yes, sir.

Cross-Examination.

Mr. ANDROS.—Q. Taking the average for the last five years around Cape Horn, where a vessel is bound to Atlantic ports what are they? A. Able seamen?

Q. Yes.

A. $20. I do not believe there has been a variation.

Q. How about Australia?

A. It is very nearly the same, possibly a little more. Asia and Australia, they give a little more; usually about $25. Asia and Australia this year, they average over $25. We had, in vessels under 500 tons, two at $30, and one at $22.50. From 500 to 1500 tons, two at $30, three at $25, one at $24, two at $22.50. Over 1500 tons, they were $20. The smaller the vessel the larger the wages they pay able seamen; that is, in the last ten months.

Q. The wages fluctuate, according to the demand and scarcity of seamen?

(Testimony of S. H. Parker.)

A. Yes, sir, very much, and the difference in the tonnage. I gave the tonnage of the smaller class of vessels. In the bigger vessels, they give a little less, because they have more men. In the difference of mates and second mates to Australia, one vessel gave $55 to the first mate, and $50 to the second mate. The next vessel gave $55 to the first mate and $40 to the second mate.

Q. That also depends upon the scarcity of those officers?

A. A great deal. One vessel gave a mate $75, and the second mate $40. That was something special. That man was going out afterwards to take charge of the vessel. You might say that it is from $8 to $10 difference between the first mate and second mate. Going around the Horn, $35 and $40 are good wages for second mates.

Q. That average is confined to sailing vessels?

A. Yes, sir, I am giving you entirely sailing vessels. Steam vessels are more. I could give you steam if you want them.

(A recess was here taken until 2 o'clock P. M.)

Afternoon Session.

UMBERTO CARRESCIO, called for the libelant, sworn.

Mr. SULLIVAN.—Q. Where do you live?

A. In Chili.

Q. Now? A. In San Francisco.

Q. What is your business?

A. I am a draughtsman at the Union Iron Works.

(Testimony of Umberto Carrescio.)

Q. How old are you? A. 22.

Q. Of what country are you a native?

A. Chili.

Q. What was your profession before you became a draughtsman at the Union Iron Works?

A. A naval officer.

Q. In what navy? A. The Chilian navy.

Q. For how many years? A. 5½ years.

Q. You were born in Chili? A. Yes, sir.

Q. Are you familiar with the voyaging by vessels up and down the South American coast? A. Yes, sir.

Q. Between Valparaiso and Cape Horn?

A. Yes, sir.

Q. And from Cape Horn to the Falkland Islands?

A. Yes, sir.

Q. Will you state whether or not you have sailed a good many times up and down that coast?

A. Yes, sir.

Q. On board of what kind of ships?

A. Merchant sailing ships, and steam ships.

Q. During how long a period of time; how long a time have you been doing this?

A. 2 1-2 years.

Q. Sailing up and down? A. Yes, sir.

Q. You say you are an officer in the navy?

A. Yes, sir.

Q. Have you ever been into the Falkland Islands?

A. Yes, sir.

Q. How many times? A. Two.

Q. How? A. In sailing ships.

Q. In a Chilean man-of-war?

A In a Chilean man-of-war.

Q. In naval ships and in merchant ships?

(Testimony of Umberto Carrescio.)

A. Yes, sir.

Q. Did you go into the harbor of Port Stanley?

A. Yes, sir.

Q. What kind of harbor is Port Stanley with reference to vessels entering and coming out?

A. Very good.

Q. Any difficulty in getting in and coming out?

A. No, sir.

Q. How long is it since you were at Port Stanley?

A. Two years, I think.

Q. How long did you stay there upon that occasion?

A. I think three days once, and another time five days.

Q. What is the population of Port Stanley?

A. I think no more than 2,000.

Q. Of what does it consist; what kind of people?

A. It is an English colony.

Q. Who lives there—what kind of people?

A. English soldiers and many Indians. There are some English soldiers. Everything is English there.

Q. How many companies of soldiers, do you know?

A. I don't know how many soldiers.

Q. Do you know whether or not there is an American Consul there? A. Yes, sir.

Q. What are the facilities for treating a man, in case of sickness, such as a broken limb, if you know; whether there are any surgeons there?

A. I think there is everything there necessary to treat a sickness, if there is any accident on the ship.

Q. A good many ships go in and out?

A. Yes, sir.

Q. It is a port of call? A. Yes, sir.

Q. Supposing a vessel, being in latitude 56° 50′ south, longitude 67° 36′ west, 480 miles from Port Stanley, with

(Testimony of Umberto Carrescio.)

the wind fair, a strong breeze, a gale in fact, with a sailing vessel, the wind west say on February 22, 1900, and on the 23d west southwest, and on the 24th of the same month west southwest, and southwest for several days thereafter, the vessel going from 6 to 10 miles an hour, perhaps more, how many days would it take her to make that 480 miles?

Mr. ANDROS.—I object to the question as incompetent. There is no evidence showing how fast this ship did sail, and on that it is perfectly immaterial. We do not know how fast her sailing qualities were. She might go in a gale of wind at a very high rate of speed, and at a light breeze she would necessarily go lighter. It seems to me this gentleman can hardly give any valuable testimony as to that.

The COURT.—What is the reason that I cannot figure it out as well as the witness? Your question is, How long will it take her to go that 480 miles with a fair wind? I know the speed of the vessel, about, from the testimony already in. Why cannot I figure it out just as well as the witness?

Mr. SULLIVAN.—So your Honor can, but I thought it would assist you.

The COURT.—I think you had better let me figure it out.

Mr. SULLIVAN.—Q. The points of the compass would be a fair wind to Port Stanley? A Yes, sir.

Mr. ANDROS.—The Captain testified to that. He said it was a fair wind.

(Testimony of Umberto Carrescio.)

Mr. SULLIVAN.—Q. Returning, would it be a fair wind?

A. Yes, sir, that wind is fair to go and come.

Q. Are there any steam vessels at Port Stanley?

A. Yes, sir.

Q. That belong there? A. Yes, sir, a steamboat.

Q. In going up the South American coast from this port, latitude 55 south, 75 west, at this point here, we have according to the chart put in by counsel for the claimant, where the vessel was, on March 1st; what course would a vessel take from that point, desiring to reach Ancud, a point on the coast 41½ south, and 74 longitude west—what course would the vessel take, desiring to reach that place?

A. Every steamer, every vessel, passes, going from the south to the north, with fair wind, near the land, not to exceed 100 miles from the land. Going in to Ancud is very easy. There is no trouble at all, getting into the harbor of Ancud. Then, going to the north of Valparaiso, it is almost just the same until 23 degrees south; then she must go to the west to get into fair wind in order to cross the equatorial line.

Q. Do you know how the winds are, whether fair or otherwise, in the month of March, following the course you have stated, to reach Ancud and Valparaiso?

A. The wind is southwest.

Q. That, of course, is a fair wind.

A. Yes, sir, from southwest to southeast.

Q. Do you know anything about the currents along that coast?

A. From the south to the north, it is called Humboldt current; one mile an hour, more or less.

(Testimony of Umberto Carrescio.)

Q. Do you know how strong the winds are at that place, going there, whether a whole sail breeze, or how?

A. A very good breeze to sail there, but it is not fixed; more than 50 miles from the shore it is a very good breeze.

Q. Do you know what the ordinary passages are from the point I have indicated, about the first of March, to Valparaiso; how long an ordinary voyage is; how long it would take for a ship? A. 14 or 15 days—

Mr. ANDROS.—I object to the question.

The COURT.—I sustain the objection. It would depend on whether the vessel can go 4 miles an hour or 16.

Mr. SULLIVAN.—I understand your Honor will make the calculation It is not the same route that the vessel took that I am now assuming a vessel can go.

The COURT.—I think I can guess within a few days how long it will take a vessel to go.

Mr. SULLIVAN.—Q. Assuming the vessel to sail as far as this line marked on the map put in testimony by the claimant, from the point I have indicated to Ancud or Valparaiso, about how many days would it take to reach Ancud? A. Seven or eight days.

Q. How long would it take to reach Valparaiso?

A. Fourteen days.

Q. What is the population of Ancud?

A. 15,000 to 20,000.

Q. Have you ever been there? A. Yes, sir.

Q. Do you know what the facilities are for caring for a man in sickness or having a broken leg?

A There are surgeons at Ancud.

(Testimony of Umberto Carrescio.)

Q. Do you mean to say they have appliances for attendance to a man in case of sickness—broken bones?

A. Yes, sir, I cannot say that there is anything for sickness, but something easy as this can be fixed there.

Q. At Valparaiso, there is everything there?

A. Yes, sir, evrything at Valparaiso.

Q. Do you know whether there are steamers and other vessels plying up and down the coast between these two points?

Mr. ANDROS.—I object to the question.

Mr. SULLIVAN.—I propose to show that two or three times a week steamers are plying up and down, going to these places and Valparaiso.

The COURT.—I do not suppose there is any doubt about it. If some vessels did not go into Valparaiso, it would not be a seaport.

Mr. SULLIVAN.—I want to show, if this vessel had gone in there, he could have hailed any of these vessels to put this man ashore, if he did not want to go there himself.

The COURT.—I will take it for granted there are vessels sailing there.

Mr. SULLIVAN.—I want to show you how many frequently.

The COURT.—I do not care how frequently.

Mr. SULLIVAN.—Q. What is this first point here where that light-house is? You have examined this chart? A. Evangelist Island.

Q. What latitude is that?

(Testimony of Umberto Carrescio.)

A. 52 south latitude, 77 west longitude.

Q. There is a light-house there?

A. Yes, sir.

Q. Is there any communication between that light-house and the various ports up and down the coast, Valparaiso and Ancud? A. Yes, sir.

Q. Do vessels stop there?

Mr. ANDROS.—I object to this. The captain was asked if he knew a place called Ancud. The witness has been examined in regard to that, and I made no objection, and another place called Valdivia, but I object to counsel going into places about which the captain was not examined. He has gone to sea.

The COURT.—I suppose their contention is that the vessel ought to have put back and gone to this light-house. I do not intimate that I think that view will be taken by me when I decide the case. Let counsel put it in.

Mr. SULLIVAN.—Q. If the vessel had touched there or near there, can you tell us whether there was any communication there?

A Yes, sir, if the vessel makes any sign, the light-house will see it and send a boat.

Q. Suppose a man was landed there at that light-house: Is there any means of conveying him to Valparaiso?

A. Valparaiso, or Sandy Point.

Q. How far is Sandy Point from that light-house?

A. One day and a half from this island to Sandy Point. From that island to Sandy Point is a day and a half (pointing to the chart).

Q. Is there any surgeon there?

(Testimony of Umberto Carrescio.)

A. Yes, sir, at Sandy Point.

Q. A surgeon? A. Yes, sir.

Q. What latitude and longitude is that?

A. 51, I think.

The COURT.—Q. What is the population of Sandy Point? A. 2,500, I think.

Mr. SULLIVAN.—Q. Suppose a vessel to reach Valparaiso in the time you say, sailing up the coast there, in 14 or 15 days; have you calculated about, assuming the same rate of speed, with a fair wind, how long it would take her to fill in the line the captain pursued coming to San Francisco?

A. Coming to this port and taking the same route?

Q. Yes.

A. I think he would lose only three or four days. No more than four days, with a fair wind and the same conditions.

Q. Have you made any calculations?

A. Yes, sir.

Q. Have you compared these two here with the two put in evidence?

Mr. ANDROS.—I do not understand what you are talking about—"these two" what?

Mr. SULLIVAN.—These two charts.

(The charts are marked Libelant's Exhibits Nos. 4 and 5.)

Q. Have you compared these two maps marked Exhibits Nos. 4 and 5, with Claimant's Exhibits Nos. 2 and 3, that one and this one (pointing)?

A. Yes, sir.

(Testimony of Umberto Carrescio.)

Q. Are they alike, except the mark you have made on them? A. I think they are all right.

Q. Have you compared them to say they are the same?

A. Yes, sir, they are the same.

Q. Except that they commence from March 1st?

A. Yes, sir.

Q. On these two, Exhibits Nos. 4 and 5, have you delineated a course?

A. I have traced the course to Ancud, and then I traced the course from Ancud to Valparaiso to meet the course of the ship, and from Valparaiso to meet the course of the ship.

Mr. SULLIVAN.—I offer these two exhibits, 4 and 5, in evidence.

Mr. ANDROS.—I object to their being introduced in evidence, because the course this man has laid out must necessarily be unreliable. We do not know what direction of the wind he has taken, or what the force of the wind was, or whether he has estimated that in connection with the currents.

The COURT.—I think I can do it just as well. I do not know that this will interfere. Let it go in. I do not think it will do any harm or any good.

Mr. SULLIVAN.—Q. Do you know what the prevailing winds are along the coast, going up the coast?

A. Southwest to southeast.

Q. In the month of March? A. Yes, sir.

Q. And February?

A. Yes, sir; all the summer, January, February and March, that is the wind, from the southwest to the southeast.

(Testimony of Umberto Carrescio.)

Q. I will ask you whether in making these lines that you have delineated on these exhibits, you did not do so with reference to the other two exhibits introduced by the claimant here, following the line that the captain has indicated he followed with his ship?

A. Yes, sir, I refer to that line which the captain took in going to San Francisco.

Q. Are the winds about the same, say from 50 from land to off the westward 700 or 800 miles, during those months?

A. I think they are not the same, but the wind always is favorable, because the captain had the wind from the southeast, and near the land the wind is from the southwest; southwest and southeast is fair wind, going from the south to the north.

Q. Either wind is fair? A. Yes, sir.

Cross-Examination.

Mr. ANDROS.—Q. I understand you to say that you have been in the Chilian navy? A. Yes, sir.

Q. How old were you when you went into the navy?

A. Seventeen years old.

Q. How long did you remain there?

A. Five and one-half years.

Q. How long is it since you left the navy?

A. Six months.

Q. You stated you were an officer. What officer were you? A. Midshipman.

Q. How many times did you say you had been to the Falkland Islands? A. Twice.

Q. How long ago was the first time you went there?

A. Two years.

Q. That is the first time? A. Yes, sir.

(Testimony of Umberto Carrescio.)

Q. How long is it since you went there the last time?

A. I think one year and a half.

Q. Are those the only occasions that you visited the Falkland Islands? A. Yes, sir.

Q. Speaking of Ancud, how many times have you been there?

A. I cannot say how many times I have been at Ancud.

Q. More than once?

A. I don't remember how many times I have been there; five, six or seven.

Q. Did you ever go to Ancud on any other occasion except when you were going to or coming back from the Falkland Islands?

A. I think so; I don't remember, of course, but I think so, because always, when I was sailing, we touched at every port on the coast.

Q. Where did you start from when you made these voyages of which you speak—what port?

A. From Valparaiso—from Dalcuhuana.

Q. Was that where your vessel sailed from generally, Valparaiso? A. I do not understand.

Q. What port did you sail from when you went on this voyage up and down the coast?

A. Valparaiso.

Q. How many times did you go down the coast during those years, as near as you can recollect, to the eastward towards the line?

A. If you speak to me so fast, I cannot understand you.

Q. We are both in the same trouble; I cannot understand you. You sailed from Valparaiso when you went to the Falkland Islands? A. Yes, sir.

(Testimony of Umberto Carrescio.)

Q. Did you sail from Valparaiso when you went to Ancud? A. When I went to Ancud, yes.

Q. Was that the same time that you went to the Falkland Islands?

A. Yes, sir, I think so; I do not remember well, but I think so.

Q. Did you go to Ancud at any other time except when you went to the Falkland Islands?

A. Yes, sir, I have been to Ancud many time, five or six time, but I do not remember well.

Q. Did you remain long at those ports, or just touched at them? A. Just touched, five or six or three days.

Q. Then you went as far as the Falkland Islands, and went back to Valparaiso?

A. Yes, sir, Valaparaiso—Dalcuhuana.

Q. How far to the eastward did you sail on leaving Valparaiso on those occasions, when you did not go to the Falkland Islands?

A. I think never, when we sailed, that we sailed further than 100 miles, and sometimes 50 miles from the shore.

Q. You do not understand me. How far did you go to the eastward when you left Valparaiso, bound to the eastward, before you turned to go back upon those occasions when you did not go to the Falkland Islands?

A. Going to the Falkland Islands from Valparaiso, and going to the south, the route is just the same. The Falkland Islands are in the Atlantic Ocean.

Q. After you left Valparaiso, you went to the Falkland Islands twice? A. Yes, sir.

Q. Did you ever sail on that course except when you went to the Falkland Islands?

A. I have sailed many times.

(Testimony of Umberto Carrescio.)

Q. Where did you go to on those occasions, some of those many occasions?

A. To Dalcuhuana, to Ancud, to Tome, Coranel, Valdivia, and every port.

Q. All along the coast? A. Yes, sir.

Q. When you made that diagram which I understand you made, you made those lines on the chart signifying the course that this vessel could have taken to have gone to Ancud and Valparaiso, and gone back to the course marked on one of those charts; what speed did you calculate the vessel going, how many miles an hour?

A. I supposed, going near the land, touching at Ancud and touching at Valparaiso; I supposed we had just the same conditions. That may not be true. It may be favorable to us, or not favorable to us. I supposed we had the same conditions. The wind is fair for us.

Q. Did you assume the winds to be the same as they were on the line drawn by the captain of the ship?

A. I do not understand.

Q. When you made those lines on the chart which you have brought here, or which have been shown here, you calculated the wind was blowing from some quarter?

A. I took the same wind.

Q. As on that other chart? A. Yes, sir.

Q. Now, did you take the same speed also?

A. Yes, sir.

Q. That is, in other words, I understand you now to say that you took the course of the wind, and the same speed that the captain's lines indicate, and applied them to a course which you laid out yourself on that chart?

A. I took just the same conditions the speed and the wind.

Q. You took the same conditions? A. Yes, sir.

(Testimony of Umberto Carrescio.)

Q. Are those your lines? A. Yes, sir.

Q. Then, in drawing those lines, you assumed the wind was the same in force and direction down here as it was away up here (pointing)? A. Yes, sir.

Q. It would be about how far from here to there?

A. Six hundred miles to the westward, more or less.

Q. You assumed that the condition of the wind and the speed was the same down here as it was up here (pointing)? A. Yes, sir.

Redirect Examination.

Mr. SULLIVAN.—Q. Suppose the wind that you say prevailed there in those months, prevailed when the vessel went up the coast; would it be any different?

A. Yes, sir; with the southwest wind here, I think we could have gone faster. I think we could have made this route in five days, and she took eight days—five or six days.

Mr. ANDROS.—Q. In these voyages that you made from Valparaiso, how far off shore did you usually run?

A. More or less, 100 miles; from 50 to 100 miles.

Q. You coasted down from 50 to 100 miles from the shore? A. Yes, sir.

Mr. SULLIVAN.—Q. That is the course usually adopted by vessels? A. Yes, sir.

Q. How long would it take to go from Ancud to Valparaiso, following that line?

A. Eight or nine days.

Mr. SULLIVAN.—With your Honor's permission, I will ask Mr. Bridges some questions that I omitted to ask him the other day.

MATTHEW BRIDGES recalled.

Mr. SULLIVAN.—Q. In doing the offices of nature, will you state whether or not you were moved from your bunk on board the ship?

A. I was taken out of the bunk every time.

Q. Upon every occasion? A. Yes, sir.

Q. Have you made any inquiry as to how much it will cost to supply you with an artificial leg, in the stores of San Francisco where they are sold or furnished? A. From $75 to $100.

Q. I see on the Captain's log-book, the official log-book, when you signed something you made your mark? Can you write? A. Yes, sir.

Q. Why did you not write your name upon that occasion?

A. I could not write at that time. There was something the matter with my arm. It was weak.

Q. Did you write your name on the shipping articles when you shipped? A. Yes, sir.

Q. After the 30th of March, when the Captain or somebody else removed the splints from your leg, and on every occasion when they were removed, can you state to the Court whether you know if there had been any union, or whether it dangled?

Mr. ANDROS.—That was asked upon the direct examination of the witness the other day. I have to be a little careful as the witness is not here. He answered that the other day. Counsel asked if his leg dangled, and he said it did.

Mr. SULLIVAN.—If he said so, all right.

Mr ANDROS.—I object to going over the same testimony again.

(Testimony of Matthew Bridges.)

Mr. SULLIVAN.—If it is admitted he so stated, that is all right.

Mr. ANDROS.—The testimony will show.

Mr. SULLIVAN.—I do not want any uncertainty about it.

The COURT.—If there is any doubt about it, answer the question. A. It was loose all the time.

Mr. SULLIVAN.—That is the case.

Mr. ANDROS.—I do not know that I have any further testimony to offer.

Testimony closed.

[Endorsed]: Filed June 17, 1901. Geo. V. Morse, Clerk. By John Fouga, Deputy Clerk.

In the District Court of the United States, in and for the Northern District of California.

MATTHEW BRIDGES, Libelant,
vs.
Ship "IROQUOIS," Her Tackle, Apparel, and Furniture. } No. 12,364.

Stipulation that Original Exhibits be Transmitted with Record on Appeal.

It is hereby stipulated by and between the respective parties hereto that none of the original exhibits of-

fered in evidence need be copied by the clerk of the District Court or made any part of the apostles on appeal herein, and that such exhibits may be forwarded by him to the Court of Appeals, and be there considered with like effect as if the same had been copied and made a part of such apostles and the record on appeal.

W. G. HOLMES,
D. T. SULLIVAN,
Proctors for Libelant.
MILTON ANDROS,
Proctor for Claimants.

[Endorsed]: Filed March 17, 1902. Geo. E. Morse, Clerk.

In the District Court of the United States, Northern District of California.

MATTHEW BRIDGES,
Libelant,
vs.
The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,
Claimants.
No. 12,364.

Opinion.

In Admiralty. Libel in rem for damages.

WALTER G. HOLMES and D. T. SULLIVAN, for Libelant.
MILTON ANDROS, for Claimants.

DE HAVEN, District Judge.—The libelant was a seaman on the ship "Iroquois" on a voyage from New York to San Francisco. The ship sailed from New York, De-

cember 27, 1899, and on February 23, 1900, when in latitude 56° 50′ south, and longitude 67° 36′ west, a little south and west of Cape Horn, the libelant, while engaged in furling the mainsail during a gale, accidentally, and without any fault on his part or that of the ship, fell from the mainyard to the deck, in consequence of which he sustained a simple fracture of the bones of the right leg below the knee, and two of his ribs were also broken. The fractured bones and ribs were set by the master of the ship assisted by the steward and the ship's carpenter. The libelant entirely recovered from the injury to his ribs, but the fractured bones of the leg failed to unite. Neither the master nor any other person on board of the vessel, had sufficient knowledge and skill to properly set the leg, or to thereafter give it necessary surgical attention. At the time of the accident the ship was about 480 miles from Port Stanley, the chief port of East Falkland Island, where surgical aid might have been obtained. The wind was fair for that port, and it could have been made in two or three days; but the testimony of the master of the "Iroquois," which I think should be accepted upon that point, was to the effect that it would probably have taken from three to four weeks to have gone to Port Stanley, and return to the place of the accident, because in returning the vessel would have had to beat against a head wind. The ship arrived at San Francisco on May 7, 1900, where the voyage ended, and the following day the libelant was paid off and his connection with the ship terminated. On May 14th he entered the Marine Hospital at San Francisco, where on or about the 16th day of October following his leg was amputated below the knee. The broken bones having failed to unite, their fractured ends had become dead and amputation of the leg was neces-

sary in order to save the life of libelant. The libelant was treated with kindness by the master at all times after the accident, and had all the care that it was possible for one in his situation to receive on board of a vessel at sea, when unattended by anyone possessing surgical knowledge and skill. The libelant at no time made any complaint of the condition of his leg, and made no request to be taken to Port Stanley, or any other port, for the purpose of obtaining surgical treatment; and he was not asked by the master, whether he would like to be taken to some port for treatment, or whether he would be satisfied with such care as could be given upon ship board. Libelant at the time of the accident was twenty years old and in good health. It appears from the evidence of the physicians who testified, that fractures similar to those sustained by libelant will unite, if properly treated by a surgeon, within three or four weeks after they are received, and that broken bones of a person of the age of libelant, other conditions being the same, will unite more readily than those of a person of mature years. The splints put around libelant's leg at the time of the accident were allowed to remain in place without removal of the bandages, for five weeks. The medical testimony is to the effect, that the splints should have been removed and replaced four or five days after being first put on, and every few days thereafter, and the leg examined at such times for the purpose of determining whether the bones were properly in place and uniting. There is no reason to doubt that if libelant had received proper surgical treatment within a few days after his leg was broken the bones would have united, and there would have been no necessity for its amputation.

This action is brought to recover damages against the vessel, the libel alleging that her master was negligent

in not immediately after the accident proceeding with the libelant to Port Stanley or bearing away to Valparaiso, or some other port on the western coast of South America, where surgical aid could have been obtained before it was too late to effect a union of the fractured bones; and the question thus presented, is to be decided upon the facts above stated.

1. It has been often decided, and may be regarded as a settled principle of admiralty law, entering into and forming a part of the seaman's contract, that it is the duty of the vessel, "to provide for a seaman who becomes sick, or wounded, or maimed in the discharge of his duty, whether at home or abroad, at sea or on land—if it be not by his own fault—suitable care, medicines and medical treatment, including nursing, diet, and lodging." (2 Parsons on Ship. & Adm., p. 81; Brown vs. Overton, 1 Spr. 462, Fed. Case No. 2024; The Atlantic, Abb. Adm. 451, Fed. Cas. No. 620; Whitney vs. Olsen, 108 Fed. 292; Scarff vs. Metcalf et al., 107 N. Y. 211.)

The contention of the claimant is that the master of the "Iroquois" was not, under the rule just stated, bound to do more for libelant than was done for him, or to prolong the voyage three or four weeks by returning to Port Stanley, for surgical aid. This contention seems to be supported by the case of Peterson vs. The Chandos, 4 Fed. 645. That was an action brought by a seaman whose leg had been broken in the service of the "Chandos"; the libel alleging that the leg was shortened three inches because it was not properly treated upon the vessel, and that the master was guilty of negligence in not going into Valparaiso, the nearest port, where proper surgical aid and appliances could have been obtained. The Court held that the master was not negligent in this respect, saying:

"The burden of proof is upon the libelant to support his allegation that the master failed to do his duty toward him in this respect If it had been shown that the vessel could, under the circumstances, make about ten miles an hour, and thereby have made Valparaiso in a little more than five or six days, it might have been proper for the master to have gone in there—indeed, I think it would have been his duty to do so. But, as it is, I do not think it would be safe to assume that this port could have been made in less than two weeks, and I do not think that the vessel was under obligation to make that sacrifice of time and risk of cargo for the libelant."

I am unable to concur in all of the views thus expressed by the able judge who pronounced the opinion in that case. I cannot agree to the proposition that sacrifice of time and risk to cargo are matters which can properly be permitted to outweigh the duty of procuring surgical aid for a seaman disabled in the service of a vessel, when such assistance is necessary and cannot be obtained otherwise than by putting into port. The obligation of the ship is discharged only when the master has used reasonable care in providing for the comfort and cure of the seaman. Whether he is required to deviate from his course, and touch at some port at which the seaman can receive better attention than can be given him upon the vessel, will depend upon the circumstances of the particular case, such for instance, as the nature of the seaman's sickness or injury, and the probability of being able to reach a port in time for his relief; but it would seem clear that if one of the crew is so ill or severely injured that any one of ordinary judgment would know that his life or limb is in serious danger, and that he ought to have medical or surgical aid at the earliest possible moment, then it would be

the imperative duty of the master to take the necessary steps to procure such aid, if within his power. Of course, if the vessel is so far at sea as to make it uncertain whether she could reach the nearest port in time to benefit the sufferer, or if the master has no reason to believe that the sickness or injury is serious, he would not be chargeable with negligence for proceeding on his course, giving to the seaman such care as his knowledge and the conveniences on board the vessel would permit. When there is no physician to consult, the master must necessarily determine as best he may, whether the injury or sickness is such as to endanger life or limb, and he cannot be charged with negligence simply because he erred in judgment, as to the necessity for putting into port, when the nature of the disease or the extent of the injury was obscure, and its serious character would not have been apparent except to a physician or surgeon; but the duty of the master to exercise a reasonable judgment in every case as to what is necessary to be done, is an absolute one. Now, in the case of an injury like that received by the libelant, the master is presumed to know, because the fact is one of common knowledge, that to make a recovery reasonably certain, the leg must be set with care and receive the attention which only a person having some knowledge of surgery can give. In such a case therefore, when there is no one on board possessing such knowledge, ordinary prudence would suggest that the services of a surgeon should, if possible, be obtained before the time has passed for a perfect union of the broken bones, and it is the duty of the master, without regard to the loss of time, or the expense incident to the deviation, to make an effort to procure such assistance by putting into some port where it can be obtained, and not to do this, if there is any reasonable probability that a port can be

made in time, is a failure to discharge the duty, which the vessel owes to a seaman, sick or disabled in its service. Certainly, to properly treat such an injury is beyond the ordinary skill of the master, and ought not to be undertaken by him without the consent of the seaman.

Upon the question involved here, the case of Whitney vs. Olsen, 108 Federal Reporter, page 292, is in point. That was an action like this, to recover damages for the alleged negligence of the master of the schooner "Uranus," in not taking the libelant to the nearest port for surgical treatment. It was shown in that case that the accident occurred when the vessel was about 500 miles from Port Townsend, the nearest port, and the injured seaman requested to be taken there. The master refused, and proceeded on his voyage. In consequence of not receiving surgical treatment in time, the bones of the leg failed to make a proper union, resulting in a permanent injury to the leg. Upon this state of facts, it was held that the master of the "Uranus" was guilty of negligence in not taking the libelant after the accident to Port Townsend, the Court saying:

"There might have been additional expense incurred, but this presents no excuse—'not the least extenuation.' If the master had performed this duty and taken the injured seaman to Port Townsend for treatment, the vessel and its owners would simply 'have been subjected to a burden which the law imposes.' No member of the crew could complain, or hold the ship responsible in damages, for loss of time necessarily incurred in the discharge of its duty. Necessity and humanity, as well as the principles of the admiralty law, would have amply protected the owners of the ship from such loss."

The fact that in that case the injured seaman requested to be taken to the nearest port, while in the present

no such request was made, is not sufficient to make the principle upon which that case was decided inapplicable to this. The libelant did not consent to the action of the master of the "Iroquois." It is not claimed that he did so expressly, and I do not think there is anything in the evidence from which such consent can be fairly implied. He was not consulted as to his wishes in the matter, and such being the case, he did not waive his right to be carried to the nearest port for treatment, by failing to request that this should be done. The duty devolved upon the master without such request to make every reasonable effort to provide the libelant with surgical aid, by taking him where it could be obtained, and the failure to discharge this duty, unless performance was waived by libelant, constitutes negligence for which the ship must respond—in damages. The libelant was a minor, and it may be, ignorant of his rights in the premises, but whether so or not, the master was in supreme authority and the libelant entirely dependent upon him for necessary care. The master knew of the risk which libelant would incur by reason of the constant motion of the vessel, and he also knew, or ought to have known, that he was not possessed of sufficient skill to properly treat the leg under conditions which might arise, and which often result from injuries of that character. In a matter of so much importance to him, the libelant should have been consulted, and the master ought not to have assumed the responsibility of proceeding upon the voyage, and himself treating the broken leg without libelant's consent.

2. Upon the question of damages. The libelant cannot follow the occupation of a seaman, but is not disabled from engaging in business or doing such light work as one in his crippled condition is competent to perform. His ability to earn wages, however, is not as

great now as before the loss of his leg. Taking this fact into consideration, as well as the pain and suffering he has endured, and the further fact that the injury sustained by him will be permanent, the libelant is, in my opinion, entitled to recover the sum of three thousand dollars, and costs, with interest from date of decree until same is satisfied.

[Endorsed]: Filed February 17, 1902. Geo. E. Morse, Clerk.

In the District Court of the United States for the Northern District of California.

At a stated term of the District Court of the United States for the Northern District of California, held at the courtroom thereof in the city and county of San Francisco, District aforesaid, on Tuesday, the eighteenth day of February, one thousand nine hundred and two. Present: The Honorable JOHN J. DE HAVEN, District Judge.

IN ADMIRALTY.

MATTHEW BRIDGES,
Libelant,

vs.

The Ship "IROQUOIS," etc., ARTHUR SEWALL et al.,
Claimants.

Decree.

This cause having heretofore been heard on the pleadings and proofs, and the advocates for the respective parties having been heard, and due deliberation being

had in the premises, it is now ordered, adjudged and decreed that Matthew Bridges, the libelant herein, do have and recover against the said ship "Iroquois" and Arthur Sewall and others, the claimants herein of said ship, the sum of three thousand dollars, damages by him sustained by reason of the matters and things alleged in his libel herein, together with his costs to be taxed, and interest thereon from the date of this decree until the same is satisfied, and it is further ordered, adjudged and decreed that unless an appeal be taken from this decree within the time limited by law and the rules and practice of this court (after due notice of this decree to the proctors of claimant) that the stipulators for costs and value herein cause the engagements of their said stipulations to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands, according to their said stipulations.

JOHN J. DE HAVEN,
District Judge.

[Endorsed]: Entered in Judgments and Decrees, book 3, page 617. Filed February 18, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk

In the District Court of the United States, Northern District of California.

MATTHEW BRIDGES,
Libelant,
vs.
The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,
Claimants.
No. 12,364.

Notice of Appeal.

To Matthew Bridges and Walter G. Holmes, His Proctor:

You are hereby notified that A. Chesebrough et al., claimants of the ship "Iroquois," intend to and hereby do appeal from the final decree of the District Court of the United States in and for the Northern District of California, entered in the above-entitled action on the 18th day of February, 1902, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, San Francisco, February 26th, 1902.

MILTON ANDROS,
Proctor for Claimants.

Service of a copy of the within notice of appeal is hereby acknowledged this 27th day of February, 1902.

WALTER G. HOLMES,
Proctor for Libelant.

[Endorsed]: Filed February 27, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, Northern District of California.

MATTHEW BRIDGES,

Libelant,

vs.

The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,

Claimants.

No. 12,364.

Assignment of Errors.

And now come A. Chesebrough and others, claimants in the above-entitled cause, and assign errors in the decision and decree of said District Court therein, as follows:

1. That the Court erred in finding and deciding that under the circumstances of the case as disclosed by the evidence, it was the absolute duty of the master of the ship to deviate from the course of the voyage for the purpose of procuring surgical aid for the libelant.

2. That the Court erred in finding that, under the circumstances of the case as disclosed by the evidence, the master of said ship "Iroquois" was guilty of negligence in not departing from the course of the voyage of said ship and proceeding with the said libelant to some port other than the port of final destination of said ship, for the purpose of procuring surgical aid for the said libelant.

3. That the Court erred in finding that under the facts of the case as disclosed by the evidence, the libelant was

entitled to a decree against the said ship "Iroquois," or the claimants thereof in the sum of three thousand dollars.

4. That the Court erred in finding that the libelant was, under the circumstances of the case as disclosed by the evidence, entitled to recover against said ship, or the claimants thereof, any damages whatsoever.

MILTON ANDROS,
Proctor for Claimants.

Service of a copy of the within assignment of errors is hereby admitted this 27th day of February, 1902.

WALTER G. HOLMES,
Proctor for Libelant.

[Endorsed]: Filed February 27, 1902. Geo. E. Morse, Clerk. By John Fouga, Deputy Clerk.

Clerk's Certificate to Transcript.

United States of America,
Northern District of California. } ss.

I, George E. Morse, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed one hundred and eight (108) pages, numbered from 1 to 108, inclusive, contain a full, true, and correct transcript of the record in said District Court in the cause entitled, "Matthew Bridges vs. the ship 'Iroquois,' etc.," No. 12,364, made up in pursuance to rule four of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of fifty-five dollars and seventy cents ($55.70), and that the same has been paid to me by the proctor for the claimants and appellants.

In witness whereof I have hereunto set my hand and affixed the seal of said District Court this 25th day of March, A. D. 1902.

[Seal] GEO. E. MORSE,
Clerk.

[Endorsed]: No. 815. In the United States Circuit Court of Appeals for the Ninth Circuit. The Ship "Iroquois," etc., A. Chesebrough et al., Appellants, vs. Matthew Bridges, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California.

Filed March 27, 1902.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.

Libelant's Exhibit No. 1.

THE AMERICAN TABLE.

AGE.	Expectation of Life.	Number Dying of each 1000	AGE.	Expectation of Life.	Number Dying of each 1000
20	42.20	7.81	58	15.39	22.94
21	41.53	7.85	59	14.74	24.72
22	40.85	7.90	60	14.09	26.69
23	40.17	7.95	61	13.47	28.88
24	39.49	8.01	62	12.86	31.29
25	38.81	8.07	63	12.26	33.94
26	38.11	8.13	64	11.67	36.87
27	37.43	8.19	65	11.10	40.13
28	36.73	8.27	66	10.54	43.71
29	36.03	8.34	67	10.00	47.65
30	35.33	8.42	68	9.47	52.00
31	34.62	8.51	69	8.97	56.76
32	33.92	8.61	70	8.48	61.99
33	33.21	8.71	71	8.00	67.66
34	32.50	8.83	72	7.55	73.73
35	31.78	8.95	73	7.11	80.18
36	31.07	9.09	74	6.68	87.03
37	30.35	9.24	75	6.27	94.37
38	29.62	9.41	76	5.88	102 31
39	28.90	9.59	77	5.49	111.06
40	28.18	9.79	78	5.11	120.83
41	27.45	10.01	79	4.74	131.73
42	26.72	10.25	80	4.39	144.47
43	25.99	10.52	81	4.05	158.60
44	25.27	10.82	82	3.71	174.30
45	24.54	11.17	83	3.39	191.56
46	23.80	11.56	84	3.08	211.36
47	23,08	12.00	85	2.77	235.55
48	22.36	12.52	86	2.47	265.68
49	21.63	13.10	87	2.18	303.02
50	20.91	13.78	88	1.91	346.69
51	20.20	14.54	89	1.66	395.86
52	19.49	15.39	90	1.42	454.54
53	18.79	16.34	91	1.19	532.46
54	18.09	17.40	92	.98	634.25
55	17.40	18.58	93	.80	734.17
56	16.72	19.88	94	.64	857.14
57	16.06	21.33	95	.50	1000.00

21231

[Endorsed]: No. 12,364. Bridges vs. Ship Iroquois, Libelant's Exhibit No. 1. Filed June 6, 1901. J. S. Manley, Deputy Clerk.

No. 815. United States Circuit Court of Appeals for the Ninth Circuit. Libelant's Exhibit 1. Received March 27, 1902. F. D. Monckton, Clerk. By Meredith Sawyer, Deputy Clerk.

18606

PROCEEDINGS

HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term A. D. 1901 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twenty-sixth day of May, in the year of our Lord one thousand, nine hundred and two. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS J. HAWLEY, District Judge:

The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,
Appellants,
vs.
MATTHEW BRIDGES,
Appellee.
No. 815.

Order of Submission.

Ordered appeal argued by Milton Andros, Esquire, counsel for the appellant, and D. T. Sullivan, Esquire, for the appellee, and submitted to the Court for consideration and decision.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,
Appellants,
vs.
MATTHEW BRIDGES,
Appellee.
No. 815.

Opinion of U. S. Circuit Court of Appeals.

MILTON ANDROS, for the Appellants.
WALTER G. HOLMES, for the Appellee,
DANIEL T. SULLIVAN, of Counsel.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

The appellee was an able-bodied seaman, and one of the crew of the American ship "Iroquois," laden with general merchandise on a voyage from New York to San Francisco. On February 23, 1900, while assisting in furling the mainsail during a gale, he accidentally and without fault of his own or fault of the ship, fell from the main yard to the deck and sustained a fracture of two ribs and of both bones of his right leg below the knee. The vessel was then a few miles to the southward of Cape Horn in latitude 56 degrees, 50 minutes south, longitude 67 degrees, 36 minutes west. The appellee was carried to the carpenter's room where the master set his leg in splints. He was then removed to the forecastle, where he remained during the remainder of the voyage. The broken ribs healed, but the bones of the leg failed to unite. The vessel arrived at San Francisco on May 7,

1900. On the following day the appellee went to the sailor's home and a week later went to the marine hospital at San Francisco. There the surgeons endeavored to cause a union of the fractured bones of his leg, but the ends of the bones were dead and would not unite. In order to save the appellee's life, it became necessary to amputate the leg, and it was amputated about three inches below the knee. The master of the "Iroquois" had no skill or experience in treating fractures. All the knowledge of the subject he possessed was derived from his own experience at some time previous when he had received treatment from a surgeon for a fractured leg. It appears that he set the appellee's leg as well as he could, and bound it and placed it upon a cushion in order to elevate it above the body, and instructed the steward to give the appellee gruel, mush and other light food. The evidence shows that the appellee made no complaint of the treatment he received, and that the master supposed that the leg was healing, and had no knowledge to the contrary until March 30th, when for the first time the splints were removed. He testified that at that time the leg seemed to be knitting, but the appellee testified that when the splints were removed, he was conscious that there was no union. One of the surgeons of the hospital testified that there never had been a union. The evidence indicated that under proper treatment the bones should have been well knitted by that time and that their failure to unite was due to want of proper surgical treatment. That there was lack of such treatment, both in permitting the appellee to remain so long on board a ship in motion and in daily moving him, as it appears was done, is clearly deducible from the evidence. The District Court found and held that under the circumstances of the case as dis-

closed by the evidence it was the absolute duty of the master of the ship to deviate from the course of the voyage for the purpose of procuring surgical aid for the appellee, and that the master was guilty of negligence in failing so to do. These findings are assigned as error.

GILBERT, Circuit Judge, after stating the case as above, delivered the opinion of the Court.

We entertain no doubt in view of the evidence in the case and the law applicable thereto that it was the duty of the master to bear away to some port of distress as soon as possible after the occurence of the accident. There were several ports to which the appellee might have been taken for surgical treatment. The vessel could have returned to Port Stanley, the chief port of the East Falkland Island. The District Court found that to have returned there would have involved a loss of time of three or four weeks, and in so finding made, we think, more than liberal allowance for probable delay and adverse winds. There were other ports accessible after rounding the Horn to which the appellee could have been taken in time to procure the necessary treatment and save his leg. The ship could have made Evangelist Island by sailing one or two days out of her course. From that island it seems that the appellee could have been taken by steamer to Valparaiso. The "Iroquois" herself could have made the port of Valparaiso with a loss of probably not more than four or five days in her voyage. He might have reached the port of Ancud or San Carlos with about the same loss of time. It is shown that at that port proper surgical treatment could have been had. When, on March 30th, the splints were removed, the vessel was as near to San Francisco as to Valparaiso, and there was no recourse except to proceed on

her voyage. It is no excuse that the master was ignorant, or that he believed the broken leg was healing properly, and for that reason thought it unnecessary to bear away from his course. Nor is he excused by the fact that the appellee, at the time, made no complaint of the treatment he received and made no demand to be taken to a port of distress. The appellee may have been ignorant of his rights and of the duty of the master in the premises, or he may have been uninformed of the proximity of accessible ports. The duty of the master to the appellee was a positive one. In Robertson vs. Baldwin, 165 U. S. 287, Mr. Justice Brown, referring to the protection accorded to seamen, observed that they are treated "as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians." The appellee had been disabled while in the service of the ship and without any fault on his own part. By the maritime law he was entitled to be healed at the expense of the ship. (Reed vs. Canfield, 1 Sum. 195; Harden v. Gordon, 2 Mass. 54.) This obligation was imposed upon the ship in consideration of the appellee's services and his undertaking to engage in possibly perilous voyages and encounter hazards if necessary in the protection of the ship and cargo. The injury to the appellee was a serious one, and the master must be presumed to have known that it required careful and scientific treatment. The argument is made that a deviation from the vessel's course would have invalidated the insurance on vessel and cargo. "A deviation is a voluntary departure from the course insured, without necessity or reasonable cause." (Bond vs. The Brig Cora, 2 Wash. C. C. 34.) We are not aware that any Court has ever held that a proper departure from the insured course for necessary treatment of a sick or wounded sea-

man operates to release an underwriter. The reverse has been held in Burgess vs. Equitable Marine Insurance Co., 126 Mass. 70; Bond vs. The Brig Cora, supra, and Perkins vs. Augustus Ins. Co., 10 Gray, 312. We find no error in the conclusions of the District Court. The decree will be affirmed

[Endorsed]: Filed Oct. 6, 1902. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

The Ship "IROQUOIS," etc., A. CHESEBROUGH et al., Appellants,

vs.

MATTHEW BRIDGES, Appellee.

No. 815.

Decree of U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Northern District of California.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, affirmed, with costs.

[Endorsed]: Decree. Filed and entered October 6, 1902. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

The Ship "IROQUOIS," etc., A. CHESEBROUGH et al.,
Appellants,
vs.
MATTHEW BRIDGES,
Appellee.
No. 815.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and thirty (130) pages, numbered from one (1) to one hundred and thirty (130), inclusive, to be a true copy of the printed record and of all proceedings in the above-entitled case in the said United States Circuit Court of Appeals for the Ninth Circuit, as the same remain of record in my office.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 11th day of December, A. D. 1902.

[Seal] F. D. MONCKTON.
Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Ship "Iroquois," A. Chesebrough *et al.*, claimants, are appellants, and Matthew Bridges is appellee, which suit was moved into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the northern district of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of February, in the year of our Lord one thousand nine hundred — three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] 81 File No. 18,795 Supreme Court of the United States. No. 567, October term, 1902 The Ship "Iroquois," A. Chesebrough *et al.*, *vs.* Matthew Bridges, Writ of certiorari. Filed Mar. 6 1903 F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE SHIP "IROQUOIS," ETC.; A. CHESEBROUGH ET AL., Petitioners and Plaintiffs in Error,
vs.
MATTHEW BRIDGES, Respondent and Defendant in Error.

Stipulation as to Return to the Writ of Certiorari.

It is, this 9th day of March, A. D., 1903, stipulated by and between the attorneys of record in the above entitled cause, that the certified transcript of the record of said cause, heretofore submitted to the Supreme Court of the United States with the petition for a writ of certiorari and now on file in the said Supreme Court, may be received, deemed to be, and considered by the said court, as the transcript of the record in this cause, and to have the same force and effect as if the same had been returned by the clerk of the circuit

court of appeals for the ninth circuit in obedience to the writ of certiorari granted on the 28th of February, A. D., 1903.

MILTON ANDROS,
Attorney for Petitioners and Plaintiffs in Error.
WALTER G. HOLMES,
Attorney for Respondent and Defendant in Error.

(Endorsed:) Stipulation. Filed March 14, 1903, F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE SHIP "IROQUOIS," ETC.; A. CHESEBROUGH ET AL., Appellants,
vs.
MATTHEW BRIDGES, Appellee.
No. 815.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a true copy of a stipulation as to return to writ of certiorari filed in the above entitled cause on the 14th day of March, 1903, as the original thereof remains on file and of record in my office.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 16th day of March, A D. 1903.

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

THE SHIP "IROQUOIS," ETC.; A. CHESEBROUGH ET AL., Appellants,
v.
MATTHEW BRIDGES, Appellee.
No. 815.

Certificate of Clerk upon Return to Writ of Certiorari.

By direction of the honorable the judges of the United States circuit court of appeals for the ninth circuit, I, Frank D. Monckton, clerk, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above entitled cause, do attach to the said writ a certified copy of a stipulation entered into between the counsel for the respective parties to said cause

on the 9th day of March, A. D. 1903, the original of which stipulation is of record in my office, and do certify the same as due return to the said writ.

Seal United States Circuit Court of Appeals, Ninth Circuit.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said the United States circuit court of appeals for the ninth circuit, at San Francisco, California, this sixteenth day of March, A. D. 1903.

F. D. MONCKTON, *Clerk.*

[Endorsed:] File No. 18,795 Supreme Court U. S., October term, 1903. Term No. 200 A. Chesebrough *et al.*, petitioners, *vs.* Matthew Bridges. Writ of certiorari and return. Filed Mar. 24", 1903.

[redacted]

[redacted]

THE SHIP "IROQUOIS"
A. CHESEBROUGH et al.,
[redacted]
vs.
MATTHEW RIDGES.
[redacted]

[redacted]

Petition for a Writ of Certiorari.

[redacted]

[redacted]
[redacted]

[redacted]

[redacted]

IN THE

Supreme Court of the United States

THE SHIP "IROQUOIS", A. CHESEBROUGH ET AL.,
Appellants and Petitioners in this Court,
vs.
MATTHEW BRIDGES,
Libellant and Appellee.

PETITION OF A. CHESEBROUGH AND OTHERS, OWNERS AND CLAIMANTS OF THE SHIP "IROQUOIS", FOR A WRIT OF CERTIORARI TO REVIEW THE DECISION AND DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE NINTH CIRCUIT IN THE ABOVE ENTITLED PROCEEDING.

To the Honorable, the Supreme Court of the United States:

The petition of A. Chesebrough and others, owners and claimants of the ship "Iroquois", respectfully shows:

That in December, 1899, Matthew Bridges, he then being not quite 21 years of age, shipped as an able-bodied seaman on the above-mentioned ship for a voyage from New York to San Francisco. That said ship was an American vessel of 1997 registered tons, and when, on December 25, 1899, she sailed from the port

of New York, had on board a general cargo of about 2900 tons. That her crew consisted of a master, mate, second mate, steward, carpenter, cook and sixteen men before the mast. That on February 23, 1900, when said ship had reached a point to the southward, and a little to the westward, of Cape Horn, the said Matthew Bridges, while aloft and engaged, during a gale, in furling the mainsail, fell, without fault on the part of the ship, to the deck and, as a result, two of his ribs, on the right side, and both bones of his right leg, below the knee, were broken. The breaking of the leg bones was a simple fracture, and the break was about half way between the knee and ankle.

The injured seaman was thereupon taken to the carpenter's shop and, as soon thereafter as the necessary splints could be prepared, the master, assisted by the steward and carpenter and cook (trans. p. 37) bathed the injured leg with warm water (trans. p. 63), set the bones in place, put on proper splints and tightly bandaged the leg. He also set and bandaged the broken ribs. The injured seaman was then placed in a lower bunk in the forecastle—a room sixteen feet square, six and one-half feet high and properly warmed, lighted and ventilated—the broken leg was propped up with pillows, and he was there made as comfortable as circumstances would permit.

The master thereafter frequently visited him, inquired after his condition and progress toward recovery, furnished and directed the steward to furnish Bridges with suitable food, prescribed (trans. p. 43) for him the needed medicines and, in every way, did all

that the resources at his command would enable him to do.

To enable the bones to properly knit, the injured leg was kept in the splints and bandages about five weeks before the same were removed, at the expiration of which time the master removed them and found (trans. p. 42) that the bones seemed to be knitted all right and that the leg was (trans. pp. 62–3) straight and in pretty fair condition, except that there were (trans. p. 42) some small sores and blotches on it. The master then washed the leg with carbolized water, rubbed it with liniment, dressed the sores with vaseline, and then replaced the splints and re-bandaged the leg; and (trans. p. 44) every day or two thereafter for about three weeks repeated the operation.

About a week after the splints were first removed and (trans. p. 31) on April 8, 1900, the injured man was able, with assistance, to go out on deck, and thereafter continued to do so, when the weather was good, until the vessel arrived at San Francisco on May 7, following. Before his arrival at San Francisco he was able (trans. p. 45) to and did walk around deck on crutches, provided by the master. The broken ribs, which were set by the master, healed properly and gave no trouble. The next day after the ship arrived at San Francisco, May 7, 1900, he was paid off and discharged. He then went (trans. p. 32) to the "Sailors' Home" (a boarding house) where he remained until May 14, when he went to the Marine Hospital in San Francisco. He there remained under the treatment of the different medical officers of that

hospital until (trans. p. 29) on Oct. 16, 1900, his inured leg was there amputated below the knee.

Mark J. White, a witness for libellant and the hospital physician who amputated the leg, testified (trans. p. 74) that when the injured man came under his care there was nothing about the leg to indicate that Bridges had not been properly taken care of. "He looked as " though he had been properly cared for" and (trans. p. 75) "I understood he was operated on for the relief of an " unknitted fracture of his leg. It was my opinion " they [the bones] had not [knitted] when I inspected " it". And (trans. p. 77) "The bones would heal more " readily at the age of this man Bridges than a man of " an older age". Again (trans. pp. 77–8)

" Q. Did you make a sufficient examination of his " leg either before or after the amputation of it to ascer- " tain whether the bones had commenced to knit at all " at any time?

" A. Yes, sir.

" Q. What did you discover in respect to that?

" A. I discovered there had been no union, and both " bones were extensively necrosed.

" Q. No union at all in any portion of them?

" A. No, sir.

" Q. What was the condition of the ends of them in " respect to having thrown out callous?

" A. No callous had been thrown out. The ends of " the bones were dead, covered over by soft parts, soft " tissue.

" Q. That was not exceptional, was it, in case of " broken bones?

" A. No, sir."

And (trans. p. 79). " Q. Do you know, as a fact, " from your studies as a surgeon, that it does oc- " casionally occur that the bones do not unite, even " when they have proper treatment?

" A. Yes, sir.

" Q. Are you able to state why it is that they some- " times do not unite?

" A. It may be on account of some constitutional " trouble, syphilis or tuberculosis, or it may be from " some local trouble, that is, from failure to put the " bones in position, or from the interposition between " the ends of the bones. The interposition of soft " parts, such as tendons, muscles, blood clots, and " foreign bodies."

No complaint of want of care was made by Bridges on board the ship, nor after arrival and before the ship sailed from San Francisco in 1900, but shortly after her next return to that port, and on (trans. p. 8) March 15, 1901, he filed his libel against the ship and her owners in the U. S. District Court, Northern District of California, alleging (trans. p. 7) as his sole cause of action, that the master was negligent in not going to either Port Stanley, in East Falkland Island; or Valparaiso, Chili, or to some other port in the southern part of South America, in quest of surgical aid for him; and alleging damages in the sum of $5,000.

On the trial it appeared, and the Court (trans. p. 109) so found, that the place of the injury was distant 480 miles westerly from Port Stanley, and that to have

gone there would have prolonged the voyage from three to four weeks.

The testimony of the master was (trans. p. 47) that he might have reached Valparaiso in a month after the accident, or a little less, and that to do so he must have deviated 500 or 600 miles from his course; and that (trans. p. 49) he knew of no other port that he could conveniently or properly go into on the South American Coast. That (trans. p. 50) when he was nearest to Valparaiso he did not think it necessary to go into that or any port as, at that time, Bridges' injured leg he thought was getting all right—that it would be all right when he got there.

There was some testimony on behalf of libellant showing that there were ports on the western coast of South America, and to the southward of Valparaiso, where surgical aid could have been procured, or at which steamers plying along the Coast call and to which Bridges could have been transferred for surgical treatment, or be taken thereon to where such treatment could be procured; but as the master testified that he was in ignorance of those facts we do not think it necessary to refer to that testimony in detail.

Libellant's health remained good to the end of the voyage.

The District Court held that the master was guilty of negligence in not immediately seeking professional or surgical aid for Bridges at some port, and entered its decree in favor of libellant.

In reaching that result, the District Judge said

(trans. pp. 112, 113, 114): "It would seem clear that "if one of the crew is so ill or severely injured that "any one of ordinary judgment would know that his "life or limb is in serious danger, and that he ought to "have medical or surgical aid at the earliest possible "moment, then it would be the imperative duty of the "master to take the necessary steps to procure such "aid, if within his power." * * * "Now, in the "case of an injury like that received by the libellant, "the master is presumed to know, because the fact is "one of common knowledge, that to make a recovery "reasonably certain, the leg must be set with care and "receive the attention which only a person having "some knowledge of surgery can give. In such a case "therefore, when there is no one on board possessing "such knowledge, ordinary prudence would suggest "that the services of a surgeon should, if possible, be "obtained before the time has passed for a perfect union "of the broken bones, and it is the duty of the master, "without regard to the loss of time, or the expense in- "cident to the deviation, to make an effort to procure "such assistance by putting into some port where it "can be obtained, and not to do this, if there is any "reasonable probability that a port can be made in "time, is a failure to discharge the duty which the ves- "sel owes to a seaman, sick or disabled in its service. "Certainly, to properly treat such an injury is beyond "the ordinary skill of the master, and ought not to be "undertaken by him without the consent of the sea- "man."

From the decree of the District Court the claimants

of the ship took, and duly prosecuted, their appeal to the Court of Appeals, and the latter Court affirmed the decree appealed from.

In reaching such affirmance the learned Judges of the Court of Appeals said (trans. p. 128): "We enter "tain no doubt in view of the evidence in the case "and the law applicable thereto that it was the duty of "the master to bear away to some port of distress as "soon as possible after the occurrence of the accident."

And, (trans. p. 129): "It is no excuse that the mas- "ter was ignorant, or that he believer the broken leg "was healing properly, and for that reason thought it "unnecessary to bear away from his course. Nor is he "excused by the fact that the appellee, at the time, "made no complaint of the treatment he received and "made no demand to be taken to a port of distress."

Thereupon and at the same term in which its decree was rendered, a stay of its mandate was granted by the Court of Appeals, to enable your petitioners to present this their petition to this Honorable Court.

Petitioners' Contentions.

The contentions of your petitioners have at all times been and now are:

1. That it was not, under the circumstances disclosed by the evidence, the duty of the master of the "Iroquois" to deviate from the course of the voyage for the purpose of procuring surgical aid for the libellant.

2. That the master was not, in view of the facts disclosed, guilty of negligence in not deviating from

the course of the voyage for the purpose of seeking surgical aid for the libellant.

And your petitioners believe that each of their said contentions is well founded in the law.

The Circuit Court of Appeals has held to the contrary of your petitioners' contentions in each of the foregoing particulars, and in so doing has (trans. p. 128) decided that "*it was the duty* of the master *to bear* "*away to some port of distress* AS SOON AS POSSIBLE "*after the occurrence of the accident*".

That decision your petitioners believe to be erroneous in the following particulars, to-wit:

1. In that it deprives the master of any discretion whatever in the premises.

2. It is erroneous, unreasonable and unduly onerous on shipowners, in this, that it requires the master to *at once* deviate and seek surgical aid for a seaman at some port in *every case* where a bone is broken, no matter how simple the fracture may be, or, if he fails so to do, the owners must be held liable as insurers of the entire recovery of the seaman.

3. It is erroneous, unreasonable and unduly onerous on shipowners, in this, that it requires the master to at once deviate and seek medical aid for the seaman at some port in every case when a seaman has, for instance, pains in the bowels that *might* be a precursor of, or a symptom of, enteritis; for the duty of the master when the seaman is sick is the same as when his bones are broken, and the danger *to life* is much greater from many kinds of disease than from broken bones.

4. The decision is erroneous, unreasonable and unduly onerous on shipowners, in this, that it requires the master to deviate and seek medical aid for the seaman at some port whenever he has, for instance, so bruised a hand or foot that blood poisoning *may* ensue; for blood-poisoning does sometimes result from such bruises, and is commonly fatal.

5. The decision is erroneous, unreasonable and unduly onerous on shipowners, in this, that it requires the master to deviate and seek medical aid at some port whenever any seaman may break a bone, receive a bruise, have a pain in his bowels, be feverish, or have any symptom of any disease that may prove fatal; or, if he shall fail to so deviate, then the owner is to be held liable as an insurer of the entire recovery of the seaman.

6. The decision is erroneous, unreasonable and unduly onerous on shipowners, in this, that it makes a possible, or probable, necessity of a seaman for surgical or medical aid the paramount consideration of the master; instead of the prosecution of the voyage in which all parties in interest have embarked. And, if carried to its logical conclusion, would make it the duty of the master to prosecute his voyage at all times as near as possible to the coast—for the seaman's employment is a hazardous one, the crew often numerous, and therefore the probable imminent need of surgical, or medical, aid is a constant quantity.

7. That the decision is erroneous, and not necessary for the welfare of the seamen, is disclosed by the facts of this case; for libellant had two of his ribs broken—

quite as serious and dangerous an injury as a simple fracture of the bones of his leg, below the knee—and those ribs healed under the care of the master; while the principle of the decision in this case requires that the master should immediately have deviated to secure surgical aid at some port in healing those broken ribs, had libellant received no other injury.

8. The decree in damages against your petitioners is erroneous in the following particulars:

a. In that it holds them liable in damages—as if insurers of the entire recovery of libellant—when the evidence in the case discloses that the bones of the leg might not have knitted even had a surgeon immediately set the broken bones and thereafter attended the libellant. That is, the testimony of Dr. White (trans. p. 79) shows that fractured bones *do not always unite* when properly set; and one reason for that is, "the interposi-" tion of 'soft parts', such as tendons, muscles, blood " clots, and foreign bodies" between the ends of the bones when set; and it must be evident that a surgeon could not, when setting the bones in a case like the present, know whether some of such "soft parts", a "blood clot", for instance, was, or was not, so interposed.

Again, the surgeons of the Marine Hospital knew the history of the case on May 14, 1900—80 days after the injury—that is, that the bones were broken on February 23, 1900; and that the bones had not knitted prior to May 17, 1900. Yet, as appears, those skilled surgeons then re-set the broken bones with the expectation that they would thereafter knit, and continued in that expectation until the leg was amputated on Oct.

16, 1900—155 days after libellant entered the hospital; and 235 days after the injury. The conduct of the hospital surgeons therefore shows, *first*, that the libellant was brought within the reach of surgical skill within such time as a cure could, with such surgical aid thereafter, be reasonably anticipated; and, *second*, that the failure of the bones to knit was not owing to any want of skill in setting them, but was due to some other cause not anticipated, or, by such surgeons, guarded against.

b. The decree in damages against your petitioners is erroneous in this, that it holds them liable as for a negligent failure of the master in setting, or in procuring the proper setting of, the broken bones of libellant's leg, when there is no evidence that the same was not properly set, and cared for. The tibia, or shin-bone—the larger of the two broken—lies so near the surface that, half way between the knee and ankle where broken, it can almost be seen, and its broken ends can be easily felt. There could be no danger that the two ends of that bone, at least, would not be properly brought in contact; and their subsequent displacement if such there was, would be easily discoverable. But there is no testimony that they were at any time after they were set by the master, and prior to arrival in San Francisco, displaced, or out of position. The master's testimony is that the bones (trans. p. 63) were properly set, and that (trans. pp. 62–3) when the splints were removed the bones were in place and seem to be knitted; the leg being then smooth and straight. Libellant's testimony (trans. p. 26) is, *not* that the bones were dis-

placed, or out of position, but only *that they had not knitted.* The hospital surgeon's testimony is (trans. p. 74) that there was nothing about the leg to indicate that it had not been properly cared for.

c. The Court of Appeals in reaching its decision that the master was guilty of negligence was governed by, and applied, an erroneous principle, to-wit: that the conduct of the master may be judged of in the light of facts occurring long subsequent, and not in the light of the facts as they were presented to him.

The law does not hold the shipowner as an insurer of the *cure* of the seaman, whether of sickness or injuries, but only that the seaman shall be given such attention, and care, as the nature of his sickness, or injury, appears at the time, and from time to time to require—the master being charged only with the exercise of an honest judgment in the premises. The seaman's employment is, in its nature, a hazardous one and takes him, on sailing vessels, far away from professional medical or surgical aid. The duty of supplying the ship with suitable drugs, medicines, bandages, etc., for the use of the seaman, and a proper book of directions for their use, is, by law, placed on the owner. The master is charged with the duty of caring for the sick or injured seaman to the best of his ability, which duty necessarily implies that he shall exercise his best discretion, in the light of present conditions, as to what it is proper to do in any case of sickness or injury of any seaman. But his duty to the seaman is not his only duty, nor is it paramount to the duty that he owes to shipowners and to cargo owners to speedily

prosecute his voyage. If a seaman, in the honest judgment of the master, is *not* in need of professional medical or surgical aid, then the master would be grossly derelict in his duty if he deviated from the course of the voyage to secure such aid. It is only when the master, exercising an honest and prudent judgment, feels himself *incompetent* to do, or to furnish, what is needful for the recovery of the seaman, whether from sickness or injury, that the master is justified in deviating from the course of his voyage in search of professional aid. Some masters may be as competent to set simple fractures of bones as are ordinary medical practitioners—and there is nothing in the evidence in this case to indicate that the master of the "Iroquois" was not so competent. There are degrees, and degrees, of professional surgical skill—but the shipowner is not required to furnish, or to procure the services of, the very best specialist. His duty is fully done when he has secured the services of one of common skill in the treatment of the particular sickness or injury. And that measure of skill—though not professional—was furnished the libellant in this case, immediately after his injury; and, in addition to that, he was brought within the reach of professional skill within such time that his cure could, by the exercise of that skill, be reasonably anticipated. What the result to libellant would have been, had he been subjected to the tender mercies accorded a seaman in some strange and foreign port cannot be known—but, in view of the results of his treatment in the hospital in San Francisco, is there any certainty, any probability, that the result to him would have been more beneficial?

As we have said, it is a simple matter to set and treat a simple fracture of the bones below the knee. They are easily to be felt, and therefore easily adjusted. Once in place, the natural contraction of the muscles will hold them there with the aid of splints and bandages, and no more is, ordinarily, required to effect a cure. Broken bones so placed will usually knit in four or five weeks. No matter how skillful the attendant, he can do no more than see that the bones are properly set, and keep them so, and then nature must do the rest. The evidence in this case shows that had the Marine Hospital surgeons been on board the ship no more would have been done by them, on the voyage, than was done by the master.

Those facts appearing, and it further appearing that the libellant was in San Francisco within such time that skilled surgeons anticipated a cure of the broken leg from proper treatment thereafter, and that for five (5) months they continued in that belief, your petitioners most respectfully represent that there is no ground for the decree, based on negligences of the master, in this case.

The decision is important.

The decision in this case is important, and is far reaching in its effects. It is the decision of a Court of Appeals, and, therefore, subject only to the decision of this Honorable Court, must be taken as the law by all of the Courts of the United States. If your petitioners are held subject to the rule which has been made the basis of the decree rendered against them in this case,

then all other ship owners will, in future, be bound thereby. That is, the masters of all vessels not having a licensed physician and surgeon, on board must, immediately upon any injury to a seaman, or his falling ill with any symptoms that *may* develop into a fatal disease—and what injury *may not* result in blood poisoning, and what cold *may not* result in pneumonia, and what fever *may not* prove to be enteric or typhoid, and what pain in the bowels *may not* result in enteritis—*at once* deviate from the voyage in search of surgical or medical skill at some port for the injured or sick seaman.

The master's judgment or discretion in the premises is, by the decision of the Court of Appeals in this case, entirely taken away; for the Court has held (trans. p. 128) "that it was the duty of the master to bear away to " some port of distress *as soon as possible* after the oc- " currence of the accident".

This in the case of a simple fracture of the bones of one leg below the knee—of all bones, perhaps, the most easily set and kept in place—and when the injured seaman was a young man, and there was therefore every reason to expect that the broken bones would speedily knit.

If the decision in this case properly declares the law, as to the duty of a master, then it is entirely probable that voyages from New York to San Francisco will be indefinitely prolonged by reason of enforced deviations therefrom in search of professional medical attendance, at ports en route, for sick or injured seamen: and this, too, when the master may have every reason to believe,

as the master did believe in this case, that the sickness will yield to the remedies provided in the "Medicine Chest," or that the injury will be readily repaired by such attention thereto as he feels entirely competent to, and can, give.

Cases considered.

The learned Judge of the District Court cited the following cases, as supporting his decision:

Brown vs. *Overton*, 1 Spr. 462, was a case in which both legs of a seaman were broken below the knee. The bones were not properly set, one being hopelessly twisted out of shape; the seaman was placed in a hammock, and no care taken of him; the master passed within 40 miles of St. Helena, and refused to land the seaman; and he was neglected after arrival in his home-port.

The Atlantic, Abb. Ad. 451, only decides that a whaleman injured, and placed on shore for care, is entitled to his "lay" for the voyage.

Scarff vs. *Metcalf*, 107 N. Y. 211, was a case where a seaman was bruised, or wounded—no bones broken—and the master refused, when advised by a physician in a Cuban port that it was necessary to put the seaman on shore there for treatment. In that case the duty of the master is (p. 216) thus stated: "When he (a seaman) " falls sick or suffers injury, the owners owe him the " duty of rendering such care and medical aid as cir- " cumstances permit".

Whitney vs. *Olsen*, 108 Fed. 292, was decided Feby. 4, 1901, by the same judges as the present case.

In that case the seaman's leg was broken in *two* places, just below the knee and near the ankle, and the Court expressly found (3) page 293, that there was no one on board "who *knew how* to properly set a fractured limb". The injured man also, in that case, requested to be taken into Port Townsend (500 miles distant), and his request was refused. The vessel was bound on a *fishing voyage* in Alaskan waters.

In the case at bar, there is no finding that the master did *not know how* to set the broken bones, and, if there was such a finding there is no evidence to support it. Neither did the injured seaman request to be landed at any port; on the contrary he was entirely satisfied to remain on board, and with his treatment there.

In the *Whitney case* the Court (p. 294) says: "The " principal controversy as to the facts arises between " the testimony of the master and the appellee con- " cerning the latter's *request* to be taken to the nearest " port", and (p. 296) held in favor of the appellee on that issue.

The Court then (p. 296) said: "Was the master, under " the facts found by the Court"—that is, no one on board who *knew how* to properly set a fractured limb; and *a request* by the injured seaman to be taken into port for treatment—"guilty of any negligence in *re-* " *fusing* to go to the nearest port after the accident " occurred." The Court (p. 298) said: "It will be ad- " mitted that the rule requiring the master of a vessel " to go into the nearest port, in order to give the injured " seaman treatment, *is not* an imperative one; that in " the nature of things there must be some limit to the

" obligation of the ship to seek aid outside of the vessel. " It depends on the facts and surrounding circum- " stances of each particular case".

With that statement of the law we have no quarrel. But how reconcile that statement, which necessarily concedes some discretion to a master, with the imperative language of the same Court, in this case, "that it " was the duty of the master to bear away to some port " of distress *as soon as possible*"—that is immediately— " after the occurrence of the accident", this, too, when the master, as appears, was competent, *did know how*, to set the fractured bone, and was able to give all needful care.

Is not the master entitled to use his honest judgment, in a case like the present, to the same extent as in other emergencies which may arise on the voyage? And can a careful attention to and consideration of conditions, requiring the exercise of a master's judgment *be properly classed as negligence*, even if subsequent events may indicate that a different course than that so determined upon might have been better? And if the conditions, at the time, justify his acts, can he, or the shipowners, be properly held in damages *as for his negligence*, because, for some reason not at the time apparent or then to be reasonably anticipated, the expected result does not ensue? We submit, there should be but one answer to these questions.

Peterson vs. *The Chandos*, 4 Fed. 645, was decided by Judge Deady, and was, in part, disapproved of by Judge De Haven. In that case the thigh bone was broken and, though not properly set, had so united as to be

strong, but the leg was about three inches short. The seaman was kept on board, without surgical aid, for 12 days after arrival in the Columbia River.

None of those cases, we most respectfully submit, are authority for the decree in this case. In no one of them were the broken bones properly set, and kept in place, as was done in this case. In no one of those cases was it declared to be the duty of the master to *at once* seek a port of distress, when a seaman was injured. In no one of them was the exercise of a reasonable discretion denied to the master.

The questions hereby presented your petitioners believe are important, not only to them and their interests, but, as well, to all owners of sailing vessels; and the decision of this Honorable Court in this case, if the writ prayed for shall be granted, will be of great importance as a guide to all masters and owners, and to all Courts when called upon to adjudicate controversies similar to the present.

Your petitioners herewith present to this Court and file a duly certified transcript of the entire record of the District Court in the case, as the same appears in the said Circuit Court of Appeals, including the several opinions, together with a brief which discusses the questions at issue.

Your petitioners pray that the writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals of the United States for the Ninth Circuit, commanding the said Court to certify and send to this Court on a certain day, to be therein designated a full and complete transcript of the

record and of all the proceedings of the said Circuit Court of Appeals in the case of the "*Ship 'Iroquois', etc., A. Chesebrough et al.*, Appellants vs. *Matthew Bridges*, appellee", No. 815, on the records of said Court, to the end that the said case may be reviewed and determined by this Court as provided by Section 6 of the Act of Congress entitled "An Act to establish " Circuit Courts of Appeal, and to define and regulate " in certain cases the jurisdiction of the Courts of the " United States, and for other purposes, approved " March 3, 1891".

And your petitioners further pray that the said judgment and decree of said Circuit Court of Appeals be reversed, and the cause remanded with instructions to enter a judgment and decree in favor of your petitioners and against Matthew Bridges, dismissing said libel, with costs.

And your petitioners will ever pray, etc.,

A. CHESEBROUGH,
On behalf of himself and all other claimants,
Petitioners.
MILTON ANDROS,
Counsel for Petitioners.

UNITED STATES OF AMERICA,
Northern District of California. } ss.

MILTON ANDROS, being duly sworn, deposes and says: I am counsel for the petitioners above named, and as such have had personal charge of the case in the United States Circuit Court of Appeals for the Ninth

Circuit, and in the District Court of the United States in and for the Northern District of California. I know the contents of the foregoing petition. The facts therein stated are true to the best of my knowledge, information and belief, and this proceeding is not prosecuted for the purpose of delay.

MILTON ANDROS.

Subscribed and sworn to before me this 2d day of January, 1903.

Meredith Sawyer,
Deputy Clerk U. S. Circuit Court of Appeals,
Ninth Circuit.

(Seal.)

CERTIFICATE OF COUNSEL.

I hereby certify that I have carefully examined the foregoing petition and application for a writ of certiorari, and that in my opinion the same is well founded, and the case is one in which the prayer of the petitioner should be granted by this Court.

MILTON ANDROS,
Counsel for Petitioners.

To Matthew Bridges, libellant, and Walter B. Holmes, Esq., Proctor for libellant, and Daniel T. Sullivan, Esq., Counsel for libellant:

Please take notice that on Monday the day of February, 1903, on the opening of Court, or as soon thereafter as the matter can be heard, I shall move the

Supreme Court of the United States, at the court-room thereof in the city of Washington, D. C., that the foregoing petition for a writ of certiorari be granted.

Dated at San Francisco, California, this day of January, 1903.

MILTON ANDROS,
Counsel for Petitioners.

Service of above and receipt of copy thereof, together with copy of the brief, is hereby admitted at San Francisco, this day of January, 1903.

Proctor for Appellee.

FILE COPY.

No. 200

Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

THE SHIP "IROQUOIS", etc.,
A. CHESEBROUGH et al.,
Petitioners.

vs.

MATTHEW BRIDGES,
Respondent.

BRIEF ON BEHALF OF PETITIONERS

In support of the petition for a writ of certiorari.

MILTON ANDROS,
Counsel for Petitioners.

PRESS OF [illegible] 513 CLAY ST., S. F.

18626

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE SHIP "IROQUOIS", ETC., A. CHESEBROUGH ET AL.,
Appellants and Petitioners in this Court,
vs.
MATTHEW BRIDGES,
Appellee.

BRIEF ON BEHALF OF PETITIONERS.

Statement of the Case.

The libellant, an able seaman, was one of the crew of the American ship "Iroquois", of 1997 register tons, on a voyage from New York to San Francisco, laden with a cargo of general merchandise. The "Iroquois" sailed from New York on or about the 27th day of December, 1899. On the 23rd of February, 1900, when in latitude 56° 50′ south, and longitude 67° 36′ west, a little to the

westward of Cape Horn, the ship encountered a gale, and the libellant, while engaged in furling the mainsail, accidentally, and without any fault on his part or that of the ship, fell from the mainyard to the deck, in consequence of which he sustained a simple fracture, below the knee, of both bones of the right leg. Two of his ribs were also fractured; but from this injury—the bones having been set by the master of the ship—he had perfectly recovered when, at the termination of the voyage, he arrived at San Francisco.

The fractured bones of the leg, as well as the fractured ribs, were also set by the master of the ship, assisted by other members of the ship's company. The subsequent treatment of the libellant's injuries, the care and attention which he received at the hands of the master up to the time of the arrival of the ship at San Francisco, his satisfaction with the treatment received, the apparently favorable progress of his recovery, and other circumstances which may be deemed to be material, will be noticed hereafter.

The ship arrived at San Francisco on the 7th day of May, 1900, where the voyage ended. On the 8th of May the libellant was paid off and his connection with the ship terminated.

On the 14th of May, six days after the arrival of the ship, in consequence of the condition of his leg, the libellant entered the Marine Hospital at San Francisco, where, on or about the 16th of October following, the leg was amputated.

This action is *in rem* against the ship to recover damages for alleged *negligence* on the part of the master—alleged to consist in his omission, after the accident, to deviate from the course of the voyage, by either retracing his course and proceeding with the libellant to Port Stanley, in the East Falkland Island, distant about 480 miles to the eastward of Cape Horn, or else by bearing away for Valparaiso in latitude 33° 1′ 53″ south, longitude 71° 37′ 13″ west, and off the proper course of the ship from Cape Horn towards San Francisco, about 1000 miles; or for a place called Ancud de San Carlos, on the Island of Chiloe on the coast of Chile, in latitude 41° 52′ south, longitude 73° 48′ 40″ west, distant from the proper course of the ship about 780 miles, at any of which ports, as it is claimed, surgical aid could have been secured. The District Court found that, to have returned to the Falkland Islands, would have involved a loss of time of three or four weeks. To deviate a distance of 1000 miles from the regular course would probably have caused an equal loss of time, and the port of Ancud might have been reached with about the same loss of time (trans. p. 128).

(For the courses and distances referred to, see charts, Claimants' Exhibits 2 and 3, and the testimony of Captain Thompson (trans. pp. 45, 47, 48, 49).

A decree having been entered for the libellant by the District Court, the claimants of the ship appealed to the Circuit Court of Appeals for the Ninth Circuit, and assigned for error:

1. That the Court erred in finding and deciding that, under the circumstances of the case as disclosed by the evidence, it was the absolute duty of the master of the ship to deviate from the course of the voyage for the purpose of procuring surgical aid for the libellant.

2. That the Court erred in finding that, under the circumstances of the case as disclosed by the evidence, the master of said ship "Iroquois" was guilty of negligence in not departing from the course of the voyage of said ship, and proceeding with the said libellant to some port other than the port of final destination of said ship, for the purpose of procuring surgical aid for the said libellant.

3. That the Court erred in finding that, under the facts of the case as disclosed by the evidence, the libellant was entitled to a decree against the said ship "Iroquois", or the claimants thereof, in the sum of three thousand dollars.

4. That the Court erred in finding that the libellant was, under the circumstances of the case as disclosed by the evidence, entitled to recover against said ship, or the claimants thereof, any damages whatsoever.

Specification of Errors.

The first and second assignments of error, above stated, sufficiently disclose the contention of the claimants:

(1.) That it was not, under the circumstances of the case as disclosed by the evidence, the absolute duty of the master of the ship to deviate from the course of

18628

the voyage for the purpose of procuring surgical aid for the libellant.

(2.) That the master of the ship was not, under the circumstances as disclosed by the evidence, guilty of negligence in not deviating from the course of the voyage and proceeding to some port other than that of final destination, for the purpose of procuring surgical aid for the libellant.

Brief of the Argument.

That, whenever a seaman falls sick or is injured in the service of the ship, he is entitled to be taken care of, and, so far as may be, cured at the expense of the ship owner, was declared by the ancient laws of the sea; and this rule may be traced with remarkable uniformity through the marine laws and ordinances of all maritime states, modern as well as ancient. It is an incident to and forms a part of his contract as a material ingredient in the compensation for his services as a seaman.

It does not, however, appear from these ancient laws that, for the purpose of procuring aid for a sick or disabled seaman, the master was required to deviate from the course of the voyage; but, on the contrary, that the seaman was to be set on shore for such treatment only when it was convenient to do so, or the ship was in port.

The effects of the injury must, of course, not have been materially aggravated by the culpable negligence of the master; for it is settled law that if, through such negligence, the consequences of the injury are rendered more serious in respect to prolonged suffering and

ultimate recovery, or if such recovery be materially retarded or rendered impossible, the shipowner would be liable in consequential damages to the seaman.

> "Beyond this I find no authority in the ancient or modern codes, in the recognized text-books, or the decisions on maritime law, for the allowance of consequential damages resulting from wounds or hurts received on board ship, whether arising from ordinary negligence of the seaman himself, or of others of the ship's company."
>
> Per Brown J., in the "*City of Alexandria*", 17 Fed. R. 395.

Cases may and do arise where, in case a seaman falls sick or is injured on the voyage, it becomes the duty of the master to proceed to and touch at some port for the purpose of procuring for him medical or surgical aid. This duty is not, however, an absolute duty. If it were, it could not be limited or restricted by any circumstances, extraneous or otherwise. No matter what the nature of the illness or injury might be, whether severe or slight, or in what seas or on what ocean the ship might be, or to what distance she might have to deviate; no matter what the dangers might be to which such deviation might expose both the ship and cargo, or what its effect might be on any existing insurance on ship or cargo; no matter what claim for damages might arise which the cargo owner could enforce against the shipowner, the ship would be liable to the seaman for not bearing away for the nearest possible port, and the master could not, except at his peril, exercise any

judgment or discretion as to the necessity of the departure from the course of the ship.

We do not understand such to be the law in respect to this duty of the master, but rather that his duty in this regard is to be determined upon a consideration of all the surrounding circumstances that should bear upon and govern his action in the matter, and that he is to decide what, in the exercise of a sound judgment and discretion, taking into account and dispassionately considering all the circumstances which should govern his action and acting, in all respects in perfect good faith, the exigencies of the case require him to do.

Some of the master's duties "and some of the most "important among them, arise only on extraordinary "occasions, and must be measured and defined by the "circumstances of each case and the exigencies which "it presents".

2 Parsons, Ship. and Ad., 4.

The master owes a duty to the shipowner and the cargo owner not to deviate from the usual course of the voyage between the port of departure and that of destination. If he deviates from it without a sufficient legal excuse, such deviation operates to discharge, from that moment, the underwriter on the ship and cargo from liability under his contract of insurance; and the cargo owner, whether *insured or uninsured*, would have a cause of action against the shipowner for any damage to the cargo consequent on such a deviation.

Among the sufficient legal excuses for a deviation

may be mentioned the cases where it is made for the purpose of recruiting the crew when generally disabled by sickness, or where the ship bears away to a port to refit, or to get fresh provisions, or to procure a new crew, or to succor a ship in distress with a view to the saving of life.

Now, as a deviation is justifiable for the purpose of rescuing and saving the lives of the crew of a ship disabled at sea and in need of succor, no reason can be seen why this rule should not apply where there is immediate need of medical aid for the preservation of the life of one of the crew of the deviating vessel, or why, in such case, a deviation, to obtain such aid, would not be justifiable. If, then, one of the crew should fall so ill, or be so severely wounded, that, without the earliest medical or surgical aid his life must be despaired of, or at least be in evident danger, the duty of the master to take, so far as may be in his power, efficient steps to procure such aid would generally, we think, be a duty paramount to that which he owes the owners of the ship and cargo, and would be a legal excuse for deviation, because it would, under the circumstances, be made in the discharge of a moral as well as a legal obligation to save human life.

> "To make the excuse for a deviation valid and effectual, it must without doubt be shown that there was a *real necessity* for the departure of the vessel from her proper course. The exigency which demands the relief must be equal in importance to the intervention which is required in its behalf. Whether it exists, and what it is, must always be questions of fact. To determine this rightly, all the

circumstances of infirmity and suffering and of relief afforded on the one hand must be considered in connection with the increased length of the voyage, the prolonged time required to accomplish it, and the additional risk incurred on the other."

2 *Parsons on Ins.*, 34n.

We shall show that neither the nature of the injury nor the circumstances attending it pointed to any danger to the life, or even to any permanent disability of the libellant, nor that the exigency which demanded relief, equalled in importance the intervention which it is contended was required in its behalf.

The decision of the master in a given case is not, we admit, conclusive as to what will constitute a proper discharge of his duty, as it may be quite apparent that, under the circumstances, it was one which a master of discretion, uninfluenced by selfish motives, and acting in complete fidelity to all his duties, could not reasonably have reached. It is then for the Court to determine and declare whether or not, in view of all the surrounding circumstances, the master acted in good faith; and whether his judgment and decision in respect to the necessity of bearing away to some accessible port of distress was or was not that of a reasonable, prudent and humane man, having in view the welfare of the libellant and the duty which he owed to him as one of the crew of the ship, together with the duty which he owed to the ship and cargo.

The law on this subject is well illustrated in the following cases:

In the *Wensleydale*, 41 Fed. 602, it is said:

> "On such vessels (not passenger ships), from time immemorial, it is the master of the ship who is expected to act as physician and nurse according to his ability in case of sickness or accident, and his care and attention are all that the crew have the right to demand under the contract of hiring."

The case at bar has a close parallel in

Peterson vs. *The Chandos*, 4 Fed. 645; in that case libellant fell from aloft on June 10th, broke his thigh bone and sustained other severe injuries. The master bandaged his leg with splints and placed it in a box made for that purpose. The ship arrived at her destination on August 22nd. Libellant was then sent to the marine hospital where his injuries received further treatment. Libellant claimed "that it was the duty of " the master, under the circumstances, to have gone " into the nearest port—Valparaiso—where proper " surgical aid and appliances could have been ob- " tained".

The Court, however, HELD that "the vessel was " under no obligation to make that sacrifice of time and " risk of cargo for the libellant". In coming to this conclusion, the Court proceeded upon the theory that " the libellant * * * was clearly entitled to be " cared for at the expense of the ship", and gave its attention, then, to the "nature and *extent* of this obligation". The views of the Court on this subject are expressed in the following language:

> "It is the duty of the master to seek surgical aid for a wounded seaman—while there is any

chance of its being useful; yet, it by no means follows that it is his duty to do so at any sacrifice or risk to the vessel or voyage. There must be some limit to the obligation to seek aid outside of the vessel. A fall from aloft is an incident of a seafaring life, and the law can scarcely be that, in such a case, surgical aid must be sought to the serious hindrance or delay of the voyage and the liability of the cargo to depreciation in the port of destination, or the delay or loss to some important enterprise undertaken upon the faith of its due delivery."

These principles are in substantial agreement with the views of the learned Judge who found for libellant in the case at bar, and who expresses them as follows:

> "Whether he is required to deviate from his course, and touch at some port at which the seaman can receive better attention than can be given him upon the vessel, *will depend upon the circumstances of the particular case*" and again:
>
> "The obligation of the ship is discharged only when the master has *used reasonable care* in providing for the comfort and cure of the seaman."

Now the essential circumstances of the case at bar seem, by a remarkable coincidence, to be identical with those in "The Chandos": The voyage along the South American Coast seems to have been the same; the deviation—to the same port, Valparaiso—would have been the same; in both cases 73 days elapsed between the day of the accident and the day of the arrival in the port of destination. In "The Chandos", although the injuries suffered by the seaman were severer and apparently demanded greater sacrifice on the part of the ship, to save the life of the injured man,

the Court held that, in view of the time and risk likely to be consumed and incurred, the master was not bound to make the departure.

A case which states clearly the principles involved in the question before the Court is, *Danvir* vs. *Morse*, 139 Mass. 323.

Under circumstances similar to those of the case at bar, the plaintiff contended that it was the duty of the master, immediately after the accident, to sail to the nearest port where surgical aid could be given, and there to land him; but this instruction was refused, and the jury were instructed that such was not the law, and that other circumstances were to be regarded besides the comfort and well-being of this one person on board the ship; that there was no absolute duty upon the master to seek the nearest port;

> "that *his duty was to be ascertained upon consideration of the circumstances bearing on the case, and he is to decide that matter, in the exercise of a sound judgment and discretion, taking into account all the circumstances which are to govern his actions*"; also "that *the burden was upon the plaintiff to show that the master's decision was not reasonable and proper at the time and under the circumstances*" (p. 324).

In other words, the instructions pointed out that all for which the plaintiff was entitled to recover was for the *aggravation to his original injury, if any, which proceeded from the negligence of the defendants.*

These instructions were sustained by the appellate Court, which stated the "true rule" to be:

"It was for the jury to consider the condition of the plaintiff, the situation of the master, the ease with which he might reach another port, the probability of finding medical attendance, and all other circumstances, and to determine whether the plaintiff had sustained the burden of showing that the decision of the master was otherwise than reasonable and proper."

The questions to be decided by the Court are, then: Was any aggravation of the libellant's injury or the subsequent loss of his leg the proximate result of *culpable negligence* on the part of the master? and was his decision to proceed on the voyage, without deviating, otherwise than reasonable and proper, under a just view of all the facts and circumstances as developed by the testimony? To determine these questions the attention of the Court is now respectfully solicited to the details of the testimony bearing upon this inquiry.

The nature of the injury was not one to create alarm in the mind of the master as being dangerous to life or likely to result in any permanent disability. It was a simple fracture of both bones of the leg below the knee, one of these bones being so near the muscular surface that it would seem to have been easy for the master, or any person of ordinary intelligence, to have discovered the nature of the fracture, and when, in the attempt to set them, the ends of the fractured bones could easily be brought into apposition. The first duty of the master was to give immediate aid to the wounded seaman, and, if possible, to set the fractured bones. This the master proceeded to do; and, as he believed—and there is no proof that this belief was not, either at that time, or at

any time during the voyage, well founded—brought the ends of the bones into juxtaposition. Having performed this operation, splints were applied and the leg bandaged. " I bathed the leg with hot water, and set it, and put " the splints on. * * * I bandaged it tight" (trans. pp. 37, 38). This, as everyone knows, is one of the usual methods, after a limb has been set, employed to keep the bones in position. The libellant was then placed in his bunk, and his leg placed in a slightly elevated position by putting a box, covered with pillows, under it (trans. p. 38).

On his cross-examination (trans. pp. 62–63) he describes his method of procedure in setting the bones, and why he believed that they were properly set. His testimony in this respect is of a character to leave little, if any, doubt that this operation was successful.

After the libellant was placed in his bunk in the forecastle, which, as appears from the master's testimony—and there is nothing to the contrary—was dry, warm, and well-ventilated (trans. p. 50), the steward was instructed to give him gruel, mush, and other light food; " there were other things from the cabin table which " were given to him as well, that were cooked for the " cabin and given to him" (trans. p. 39). * * * "I " think I must have given him that diet until after I " took the splints off, to the best of my memory. I " think I gave it to him off and on pretty nearly all the way, different things" (trans. p. 44).

In answer to the inquiry whether the libellant made any request of him for different kinds of food (p. 44) he

replied: "I don't think he made any request of me at " all. I don't remember his making any request at all " for any other kinds of food. He seemed to be satis- " fied with what he got. I remember giving the " steward a can of milk every four or five days to make " his gruel with; condensed milk which we used for " that purpose, together with corn-starch and things " like that. That was given to the steward, and my " instructions were to give it to that man" (trans. p. 44).

When the master did not himself dress the libellant's leg, he ordered the steward to do it. "I gave the stew- " ard directions to dress his leg, to wash it with warm " water and dress it with vaseline, and from there on " and up to the last" (trans. p. 51).

Did he make any complaint that he was not being attended to? "No, sir; he made no complaint. He " seemed to be contented, when I asked him if he felt " all right and was satisfied. He said that he was; he " was perfectly contented; that he was getting every- " thing he wanted" (trans. pp. 52–66).

Now, of the captain's testimony respecting his treatment of the libellant, and of the satisfaction of the latter with it, there is not one statement, if we except the salts, that is contradicted or qualified by the libellant.

Whenever the master deemed it necessary—and, for the purpose of ascertaining when it was necessary, he

seems to have kept a careful watch over the man—he administered salts (trans. p. 38).

The libellant, however, testifies that he never received, in a single instance, anything except the regular forecastle food (trans. pp. 28, 32). As opposed to this testimony is not only the testimony of the master giving details as to the kind of food furnished him, but the probability arising from the humane treatment of him by the master from the time he was injured until he arrived at San Francisco, and also the entry in the official log-book on page 44, a copy of which appears on page 41 of the transcript, which, before the end of the voyage, was signed by the libellant: "I set the leg, " bandaged the side, and administered salts and regu- " lated his diet." On cross examination (trans. p. 58), the captain explains what he meant by "regulated his diet".

After he was put in the forecastle the captain visited him every two or three days from that on. "I asked " him every time I went in there how he was getting " on; if he had everything he wanted. He said he was " getting along all right. He seemed to be contented; " that he had everything he could wish" (trans. p. 42).

The libellant having stated, on his cross examination, that he sent to the captain for vaseline and salts, and did not get either, then admits that it was only on two occasions that he did not get the salts, but he always got the vaseline (trans. p. 34). Why he did not get salts as well as vaseline, if he sent for them, can be explained only by the conjecture that his request was not

made known to the master. But this is an immaterial matter except as it may bear upon the veracity of the latter. The captain, in answer to a question whether he furnished him with everything he requested, answered that he did, and everything he asked for he got. He was then asked whether the libellant sent for salts on one or two occasions and did not get them. He answered: "He got everything he sent for. In fact, he " did not need to send for anything, because I went to " the forecastle and asked if he wanted anything. " When he wanted anything he got it. He did not " need to ask for salts. I asked him if his bowels were " working and everything like that, to see if he was in " proper condition. When he said they were not work- " ing, I gave him salts. *I considered it my place to* " *attend to that. He did not need ta ask for anything* " *like that. He was not given occasion to*" (trans. p. 43). This testimony is not denied by the libellant except in the instances noticed above.

It sufficiently appears from the testimony of the master that the libellant was, in every respect, treated by him with consideration and kindness, and there is nothing in the testimony of the latter to indicate anything to the contrary. This view was entertained by the District Judge: "The libellant was treated with " kindness by the master at all times after the accident, " and had all the care that it was possible for one in his " situation to receive on board of a vessel at sea, when " unattended by anyone possessing surgical knowledge " and skill" (Opinion, trans. p. 110). This treatment

is to be taken into consideration as material to the question whether the master acted toward the libellant in good faith, and spoke truly when he testified that, when he could have shaped a course for Valparaiso, he did not do so because the appellant was apparently " entirely getting along all right. I thought the leg " would be all right when we got here". * * "I did " not think it necessary to put away. I did not see any " need of it. I did not think he could get any better " treatment than I could give him myself at the time"; and that he was of opinion that the leg was getting along all right and knitting successfully (trans. p. 50).

From and including the 23d of February up to the 1st of March, the ship had made about 360 miles to the northward and westward from the point where the accident happened. During all of this time there was nothing to indicate that the libellant was not getting along all right; he thought that he was, and so did the master. No special circumstances connected with his injury were developed to indicate that, for the purpose of securing surgical aid, it was necessary or advisable to put the ship about and proceed to Port Stanley, distant about 480 miles, on a straight course, to the northward and eastward of Cape Horn.

The learned Judge of the District Court, referring to the question, how long it would have taken, said: " The testimony of the master of the 'Iroquois', " which, I think, should be accepted upon this point, " was to the effect that it probably would have " taken from three to four weeks to have gone to Port

" Stanley and return to the place of the accident, because " in returning the vessel would have had to beat against " a head wind" (Opinion, trans. p. 109).

So as to bearing away for Valparaiso. How long it would have taken the ship to have reached that port is a matter of mere conjecture. "It is very hard to tell. " I might have got to Valparaiso in a month; it might " have been less than a month" (trans. p. 47). How much going there would have lengthened the voyage as to distance "is pretty hard to figure on; I do not know" (trans. p. 47). Had the ship been at a point in longitude 80° west and latitude 50° south, where she could have first borne away for that port (trans. p. 47), sailed in a straight line for Valparaiso, in longitude 71° 37′ 23″ west, and latitude 33° 1′ 53″ south, the distance to that port would have been 1,085 miles; but, as the ship could not have sailed in a straight line to that port, no one could, of course, tell what distance the ship would have to sail in order to reach it, nor, consequently, the time occupied in reaching it. Under the view, however, which we take of this case, it is not deemed necessary to go into any close calculation of the length of time that it would have taken the ship to have reached Valparaiso, because it must, necessarily, be in great part based on conjecture as to the force and direction of the wind, especially when nearing the Chilean coast. While, however, the master testified that the nearest distance he was from Valparaiso on the course which he sailed towards San Francisco was 500 to 600 miles, which seems to have been a mere off-hand guess,

an examination of the courses laid down by him on the chart (Claimant's Exhibit 2) taken from the ship's log book, will show, that when, on that course, the ship was in the latitude of Valparaiso, she was distant from that port 1,018 miles, a distance which must have been, so far as can be known, necessarily lost, had she deviated from her course and gone to that port.

We say nothing of the master's not proceeding to Ancud de San Carlos, where it does not appear that there was any American Consul who could have taken charge of the libellant; for, if it were the duty of the master, under then existing circumstances, to have landed the man at some place, it must have been at one where he could have placed him in charge of some responsible person to watch over and take care of him. Nor do we speak of his not proceeding, as seems to be suggested (trans. p. 97), to the lighthouse on the rocks of Los Evangelistas at the western entrance to the Straits of Magellan, to be shipped thence either to Sandy Point situate in those straits, and between two and three hundred miles to the eastward of the Evangelistas Islets, or to Valparaiso; nor of not having cruised along the coast of Chile in the expectancy of falling in with and putting him on board of some passing steamer. It is suggested, in the opinion of the learned Court of Appeals, that the ship "could have made Evangelist " Island by sailing one or two days out of her way". Had the master consulted the "Directory for Navigation of the South Pacific Ocean", a standard work by Alexander George Findley, and which, presuma-

bly, he possessed, he would have derived the following information: "Los Evangelistas, consisting of four "rocky islets and some detached rocks and breakers "* * * are very rocky and barren, and situated "only to afford a resting place or breeding haunt for "seals and oceanic birds, but a landing place may "be found on one of them * * *." Certainly not a very promising place in which to secure surgical aid and attendance for a sick or wounded man. To have disposed of the man in any of these ways, if it could have been done, which is not at all probable, would have been an act of folly, and, had it been done, it might well have been charged that the master did not care what became of the libellant, but sought to get rid of him as an encumbrance, and to escape payment of his wages up to the termination of the voyage.

On the 4th of March, nine days after the accident, the ship was in latitude 30° south, longitude 88° west (see Claimants' Exhibit 2), distant from Valparaiso in a direct line 1254 miles. The ship was then in a position to have had her course shaped for Valparaiso, had the condition of the libellant then called for such a deviation. At this time, however, there was not, so far as was known or could then be known, any necessity for doing so.

At this time there was nothing in the condition of the libellant that called for such or any deviation from the course of the ship; no fever, nor any symptoms had supervened to raise a doubt but that he was getting along as well as could be expected of a man whose leg had been fractured but a short time previous. Nor did

the subsequent examination of the leg, on removal, for that purpose, of the bandages and splints, disclose that any mistake as to the condition of his injured limb had been made.

On the 30th of March, 38 days after the occurrence of the accident, the ship then being in longitude 109° west, and latitude 7° 50′ south (see chart, Claimants' Exhibit 2), and about 1790 marine miles west from the coast of Chile, the bandages and splints were, by the master, removed from the libellant's leg for the purpose of examining it, this being the earliest time that the master thought it safe to do so. "I did not think it safe " to take the bandages off (before). I had to give the " leg time to knit" (trans. p. 43, cross-ex., p. 57). If taken off before, he feared that the bones would separate (trans. p. 43). I "found that the leg was im- " proving and seemed to be in pretty good condition with " the exception of some sores and blotches on the leg. I " thought it might be on account of the blood settling there " like blood vessels, or blood blisters, rather". * * * " I washed the leg with warm water, and a little carbolic " acid in to purify it, and dressed it with vaseline". * * * "For about three weeks I dressed it pretty nearly " from one to two days, * * * by taking the band- " ages off, washing the leg and rubbing it with lini- " ment; that is, where there were no sores, and where " there were sores, I dressed it with vaseline" (trans. pp. 43–44).

"About a week after I took the splints off the first " time, he was able to go out on deck with the aid of

" crutches." After this he went out on deck, "whenever " the weather permitted him to go out". This continued up to the time of his arrival at San Francisco. " Before he arrived here he was able to go out on deck " and walk around deck a little on crutches; of course, " he had to have some one help him out of his bunk. " When he got on his crutches he could move around" (trans. p. 45).

In respect to the blood blisters on the leg, they do not appear to have been of a serious or unusual nature; nor was there anything in the appearance of the leg that indicated that it had not been properly set, so far as the master could discover, when the bandages and splints were removed. The libellant, however, testifies that his leg was loose; it had not knitted, and that it worked back and forth when the splints were off.

"Q. Was that so anybody could see it? A. Yes, sir" (trans. p. 26).

Now, if this were so, it is surprising that not only the libellant did not call the attention of the master to it, but still more surprising that the latter did not see it when he examined the leg after the splints were taken off for the very purpose of ascertaining its condition.

It is to be observed that at no time prior to the termination of the voyage did the libellant request to be landed at any port or place, or make any suggestion to that effect. Nor did he at any time request that the master come and see him, when the latter did not come

(trans. p. 35). He thought he was getting along all right, and said so to the master. Doubtless he preferred remaining on the ship, where he was kindly treated and cared for, to the end of the voyage and have an opportunity of going to his friends, who, it would seem, resided at or near Port Townsend (trans. p. 28), to being landed at some port on the Chilean coast, among a strange people speaking a strange language. In fact, actuated by a desire to reach his friends, he remained at the Sailors' Home a week, waiting to hear from them, before he went to the hospital.

We believe we have now called the attention of the Court to the material facts of this case. Now, under a fair view of all these facts does it satisfactorily appear that the master of the ship "Iroquois" was guilty of any negligence in the discharge of any duty that, as master of the ship, he owed to the libellant as one of the crew? If, in any respect he has been guilty of negligence, wherein does this negligence consist? We respectfully submit that there is no sufficient evidence to establish this charge beyond the naked fact that the libellant was not landed at some intermediate port for surgical treatment, and as to this, no necessity, either at the time of the happening of the accident or during the voyage of the ship, is disclosed in the evidence. If, under the circumstances of the case as known, or as honestly and intelligently believed to then exist, the master had left the libellant at some port on the coast of Chile, or else-

where, and through maltreatment or malpractice at the hands of others on shore, he had sustained additional injury, what excuse could the master have offered for not having kept him on shipboard to the end of the voyage?

We respectfully submit that the petition for a writ of certiorari should be granted.

MILTON ANDROS,
Counsel for Petitioners.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1903.
No. 200.

A. CHESEBROUGH et al., Owners and Claimants of the Ship "Iroquois,"
Petitioners,

vs.

MATTHEW BRIDGES.

BRIEF ON BEHALF OF PETITIONERS.

STATEMENT OF THE CASE.

This is an action *in rem* brought in the District Court of the United States for the Northern District of California against the American ship "Iroquois" to recover damages for the alleged negligence of the master of the vessel in not deviating from the course of the voyage and proceeding to some port, other

than that of the ultimate destination of the vessel, for the purpose of procuring surgical aid for a seaman who had been accidentally injured on the voyage. The District Court having, on the 18th day of February, 1902, entered a decree in favor of the libelant in the sum of three thousand dollars and costs and interest from the date of the decree, the claimants of the vessel, petitioners in this court, appealed to the United States Circuit Court of Appeals, and that court having, on the 6th day of October, 1902, affirmed the decree of the District Court, the claimants petitioned this court for a writ of *certiorari,* which was granted on the 28th day of February, 1903; to this writ due return was made on the 16th day of March, 1903, and the cause is now before this court to be heard on the record and proceedings of said Circuit Court of Appeals.

The ship "Iroquois," of 1997 registered tons, laden with a valuable cargo consisting of about 2900 tons of general merchandise, sailed, on the 27th day of December, 1899, from the port of New York bound to the port of San Francisco. On the 23d of February, 1900, the ship, when in latitude 56° 57′ south and longitude 67° 36′ west,—a little to the southward and westward of Cape Horn,—encountered a gale; and the libelant, when engaged in furling the mainsail, accidentally and without fault on his part, or of that of anyone, fell from the main yard to the deck, the fall resulting in a simple fracture, below the knee, of both bones of his right leg, and also the fracture of two of his ribs. From

this last named injury he had, however, perfectly recovered, when, on the 7th day of May, 1900, he arrived at San Francisco where the voyage ended. The next day, May 8th, he was paid off, and his connection with the ship, as one of the crew, terminated. (Trans., pp. 21, 22, 35, 36, 37, 68.)

The fractured bones of the leg, as well as the fractured ribs, were set by the master of the ship, assisted by others of the ship's company. (Trans., p. 37.)

The subsequent treatment of the libelant's injuries by the master; the care and attention which he bestowed upon him up to the time of the arrival of the ship at San Francisco; and other circumstances, which may be deemed to be material, as tending to show that the master, in omitting to deviate, as it is claimed that he should have done, to procure surgical assistance for the libelant, acted not negligently, but in the exercise of sound judgment and discretion and in perfectly good faith, will be noticed hereinafter.

On the 14th of May, six days after the arrival of the ship, the libelant, in consequence of the condition of his leg, entered the Marine Hospital at San Francisco, where, on or about the 16th of October following,—five months after he entered therein,—the leg was amputated.

It is alleged in the libel that the master of the ship could, immediately after the accident and with small loss of time, have proceeded with the libelant to Port Stanley on the East Falkland Island, or to Valparaiso,

or to some one of several other ports in the southern part of South America, where surgical aid could have been obtained for him, and the subsequent loss of his leg by amputation would thereby have been averted; and that the omission of the master to proceed to some one of these ports constituted such negligence on his part as to render the vessel liable in damages to the libelant. (Trans., pp. 6, 7. Libel, Art. V and VII.)

The claimants in their answer, denied, among other things, that the vessel could have proceeded to any one of the ports mentioned in the libel with small loss of time; and also denied that the master, in omitting to proceed to any one of said ports with the libelant, was guilty of any negligence whatever. (Trans., pp. 13, 14. Ans., Art. V, VII.)

The claimants then, by proper averments, stated the facts and circumstances relating to the setting of the broken bones; the subsequent care and attention which were bestowed upon the injured seaman, and that, so far as the master could ascertain, there was nothing to indicate that the bones of his leg were not in the process of healing, and nothing to indicate that there was any necessity to proceed with the libelant to an intermediate port, even if it could have been easily and conveniently done, but which, had it been done, would necessarily have lengthened the voyage to a considerable extent both as to time and distance. The issue thus raised, and on which the cause was tried in the District Court, was whether or not, under the circumstances of the case, it

was the duty of the master to bear away to Port Stanley in the East Falkland Island, distant about 480 miles, or to some one of the more distant ports in the southern part of South America, and whether or not, in omitting to do so, he was guilty of such culpable negligence as to render the ship, and, consequently, her owners, liable in damages. (Trans., pp. 15, 16, 17. Ans., Art. X.)

The District Court found that it was the duty of the master to have proceeded with the libelant to some intermediate port, and that his omission to do so constituted such negligence as to entitle the libelant to damages, and assessed the same in the sum of three thousand dollars, for which a final decree was entered. From this decree the claimants appealed to the Circuit Court of Appeals, and assigned errors as follows:—

1. That the Court erred in finding and deciding that under the circumstances of the case as disclosed by the evidence, it was the absolute duty of the master of the ship to deviate from the course of the voyage for the purpose of procuring surgical aid for the libelant.

2. That the Court erred in finding that, under the circumstances of the case as disclosed by the evidence, the master of said ship "Iroquois" was guilty of negligence in not departing from the course of the voyage of said ship and proceeding with the said libelant to some port other than the port of final destination of said ship, for the purpose of procuring surgical aid for the said libelant.

3. That the Court erred in finding that under the

facts of the case as disclosed by the evidence, the libelant was entitled to a decree against the said ship "Iroquois," or the claimants thereof, in the sum of three thousand dollars.

4. That the Court erred in finding that the libelant was, under the circumstances of the case as disclosed by the evidence, entitled to recover against said ship, or the claimants thereof, any damages whatsoever. (Trans., Assignment of Errors, pp. 119, 120.)

SPECIFICATION OF ERRORS.

The first and second of the foregoing assignments of error were those relied upon. The third and fourth assignments of error, being general in their nature and but little, if anything, more than conclusions drawn from the first two, were not considered separately.

The Appellate Court affirmed the judgment of the District Court and found, as appears from its opinion—for neither in that court nor in the District Court were made any specific findings of fact—that

"From the evidence and the law applicable thereto, " it was the duty of the master to bear away to some port " of distress as *soon as possible* after the occurrence of " the accident. There were several ports to which the " appellee might have been taken for surgical treat- " ment. The vessel could have returned to *Port Stan-* " *ley,* the chief port on East Falkland Island. * * * " There were other ports accessible without rounding " the Horn to which the appellee could have been taken

" in time to procure treatment to *save his leg*. The ship " could have made *Evangelist Island* by sailing one or " two days out of her course. From that island it seems " the appellee could have been taken by steamer to " Valparaiso. The "Iroquois" herself could have made " the port of *Valparaiso* with a loss of probably not " more than *four or five days in her voyage*. He might " have reached the port of *Ancud or San Carlos with* " *about the same loss of time* * * * where surgi- " cal treatment could have been had. When, on the " 30th of March, the splints were removed, the ship " was as near to San Francisco as to Valparaiso, and " there was no recourse except to proceed on her voy- " age. It is *no excuse* that the master was ignorant, or " *that he believed the broken leg was healing properly,* " and *for that reason thought it unnecessary to bear* " *away from his course.*" (Opinion, Tr., p. 128.)

This decision your petitioners believe, as pointed out in their petition, to be erroneous in this:

1. That it was not under the circumstances disclosed by the evidence, the absolute duty of the master of the "Iroquois" to deviate from the course of the voyage for the purpose of procuring surgical aid for the libelant.

2. That the master was not, in view of the facts disclosed by the evidence, guilty of negligence in not deviating from the course of the voyage for the purpose of seeking surgical aid for the libelant.

a. That it deprives the master of the exercise of any discretion whatever in the premises.

b. That it requires the master to *at once* deviate and

seek surgical aid for a seaman at some port in *every case* where any bone is broken, no matter how simple the fracture may be, or if he fails to do so, the owners must be held liable as insurers of the entire recovery of the seaman.

POINTS AND AUTHORITIES.

That, whenever a seaman falls sick or is injured in the service of the ship, he is entitled to be taken care of, and, so far as may be, cured at the expense of the ship owner, was declared by the ancient laws of the sea; and this rule may be traced with remarkable uniformity through the marine laws and ordinances of all maritime states, ancient as well as modern. It is incident to, and forms a part of, his contract as a material ingredient in the compensation for his services as a seaman.

Osceola, 189 U. S. 150, 175.

The obligation of the master to the seaman in this respect is an obligation wholly independent of their relation as fellow servants in navigating the ship. It is the ordinary maritime obligation to provide for a seaman's cure of hurts while in the service of the ship.

Brown, J., in *The "Scotland,"* 42 F. 925, 927.

It does not, however, appear from the ancient laws of the sea that, for the purpose of procuring aid for a sick or disabled seaman, the master was required to deviate from the course of the voyage; but that the sea-

man was to be set on shore for such treatment only when it was convenient to do so, or the ship was in port.

"If it happens that sickness doth seize on any of the "mariners while in the service of the ship, the master "ought to set him on shore, and to let him have candle- "light, and provide him a lodging, and also to spare "him one of the ship's boys, or hire a woman to attend "him; likewise to afford him such a diet as is usual in "a ship. * * * And if the *vessel be ready for her* "*departure he ought not to stay for said sick party.*" (Laws of Oleron, Arts. VI and VII.) "If a seaman "falls ill of any disease *and it is convenient to put him* "*ashore,* he shall be fed as if he was aboard and have "some one to look after him there." (Laws of Wisby, Art. XIX.

While the seaman is to be cured, so far as may be at the expense of the ship, of sickness or injury sustained in its service, he is not to receive any compensation or allowance for the effects of the injury. But so far, and so far only as expenses are incurred in the cure, whether they are of a medical, or other nature, for diet, lodging, nursing, or other assistance, they are a charge on, and to be borne by the ship. The sickness or other injury may occasion a temporary or permanent disability; but that is not a ground for indemnity from the owners.

"They are liable only for expenses necessarily in- "curred for the cure; and when the cure is completed, "at least so far as the *ordinary* medical means extend, "the owners are freed from all further liability. They "are not in any just sense liable for consequential dam- "ages. The question, then, in all such cases is, what

"expenses have been virtually incurred for the cure; "not what might, under other circumstances, be in- "curred. The owner is not to respond for charity act- "ually administered by others, but for expenses. He is "not to pay what may remunerate the sufferer for his "losses, or what in compassion or humanity he might "demand; but what the law has measured out as the "limit of justice."

Story, J., in *Reed* v. *Canfield,* 1 Sum. 202, 203.

This we believe to be a correct general statement of the law relating to the duty of the shipmaster, and the liability of the ship-owner in respect to the care of sick and injured seamen. It must, however, be taken with the qualification that the effects of the injury have not been materially aggravated by the culpable negligence of the master; as it seems to be settled law, that if, through such negligence, the consequences of the injury are rendered more serious in respect to prolonged suffering and ultimate recovery, or if such recovery be materially retarded or rendered impossible, the ship-owner would then be liable in consequential damages to the seaman.

"Beyond this I find no authority in the ancient or "modern codes, in the recognized text-books, or the "decisions on maritime law, for the allowance of con- "sequential damages resulting from wounds or hurts "received on board ship, whether arising from ordi- "nary negligence of the seaman himself, or of others of "the ship's company."

Per Brown, J., in the *"City of Alexandria,"* 17 Fed. R. 395.

The view of the lower courts seems to be that the master has an absolute duty to deviate from his course in order to procure medical and surgical aid in all cases where a member of the ship's company has fallen ill or has been injured. The effect of such a doctrine would be that, no matter what the nature of the illness or injury may be, whether severe or slight, no matter where the ship may be sailing at the time of the injury, or how far she may have to deviate; no matter what the dangers might be to which, in consequence of such deviation, ship, crew, and cargo may be exposed, or what the effect may be on existing insurance of ship and cargo; or what claims for damages may arise which the cargo owner might enforce against the shipowner; the ship would be liable to the seaman for not bearing away for the nearest port at which aid and relief might possibly be obtained. Under such a doctrine there would be no room for the exercise of judgment and discretion on the part of the master regarding the necessity of the departure of the ship from her regular course.

We do not understand this to be the law regulating the duty of the master. We claim that his duty is dependent upon the circumstances surrounding him at the time of the accident, and that he must determine his action in the light of these circumstances and in the exercise of a reasonable discretion.

Cases may arise where, guided by reasonable discretion, he would be bound to deviate for the purpose of

securing medical or surgical aid for a member of his crew. Where a man of intelligence sufficient to command a ship would perceive that, in the absence of competent professional aid, an injury to a seaman will probably terminate in death or result in a grievous and permanent disability, and that a port of distress may be reached in season to afford to the afflicted seaman the necessary medical or surgical relief, the omission to sail for the port of distress would render the ship liable for any aggravation of the disease or injury.

On the other hand there are cases in which a prudent and competent master, in the exercise of a wise discretion and carefully weighing the conflicting interests which all the circumstances of the case present, would come to the conclusion that the situation offers no features which imperatively demand a deviation from his course—a measure which, *prima facie,* exposes his ship and cargo to danger and liability. The exercise of an honest and fair discretion should protect him and his ship against claims for damages resulting from situations in which many of the conflicting duties which he owes to the various interests in his keeping compete for the shaping of his final judgment.

Besides the duty which the master owes to the seamen in respect to their treatment in cases of illness or injury, he ownes a duty to the ship-owner and cargo owner not to deviate from the course of the voyage marked out between the port of departure and that of destination; for, if he does that, except involuntarily, and under the

pressure of an imperious necessity, it operates, from that moment, to discharge the underwriter on the ship and cargo from liability under his contract of insurance, and the cargo owner, whether *insured or uninsured,* would have a cause of action against the ship-owner for any damage to the cargo subsequent to such deviation.

We shall endeavor to show that, in the present case, neither the nature of the injury nor the circumstances attending it pointed to any danger to the life or to any permanent disability of, the libelant.

We concede that the decision of the master, in a given case, cannot be conclusive as to what constitutes a proper discharge of his duty, as the circumstances may be such as to make it apparent that it was a decision which a man of sound discretion and judgment, uninfluenced by selfish motives, and acting in complete fidelity to all his duties, could not have reached. It is then for the court to determine as to whether or not, in view of all the circumstances as then presented to the master, he acted in good faith; and whether his decision in respect to the necessity of bearing away to some accessible port of distress was or was not that of a reasonable, prudent, and humane man having in view the welfare of the libelant and the duty which he owed to him as one of the crew of the ship, consistently with the duty which he owed to the ship and cargo. If it were, then the omission to do so does not constitute such negligence as to render the ship liable in damages.

In support of these views we refer to *Peterson* v. *The Chandos,* 4 Fed. 645. In this case the ship was bound

from New York to Portland, Oregon. On the 10th of June, when in latitude 38° south, longitude 98° west, —2° 25′ farther to the westward than the "Iroquois" was when in the same latitude on the 11th day of March,—Peterson fell from aloft, which resulted in the breaking of his thigh bone and otherwise injuring him. The contention there, as well as here, was that the ship should have gone to Valparaiso. The presiding judge, Deady, in commenting on the case of *Brown* v. *Overton,* 1 Sprague, 462, which was the only case cited on this question, said:

> "While it proves it is the duty of the master to
> " seek surgical aid for a wounded seaman while
> " there is any chance of its being useful, yet it by
> " no means follows that it is his duty to do so at
> " any sacrifice or risk to the vessel or voyage.
> " There must be some limit to the obligation to
> " seek aid outside of the vessel. A fall from aloft
> " is an incident of a seafaring life, and the law can
> " scarcely be that in such a case surgical aid must
> " be sought to the serious hindrance or delay of the
> " voyage and the liability of the cargo to depreciation in the port of destination, or the delay or
> " loss to some important enterprise undertaken
> " upon the faith of its due delivery."

The essential circumstances of the case at bar seem to be almost identical with those in "The Chandos": The voyage off the South American coast seems to have been the same; the deviation—to the same port, Valparaiso—would have been nearly the same; and in both cases seventy-three days elapsed between the day of the accident and the day of the arrival at the port of des-

tination. In "The Chandos," although the injuries suffered by the seaman were more severe than those of the present libelant and apparently demanding a greater sacrifice on the part of the ship, the Court held that, in view of the time and risk likely to be consumed and incurred, the master was not bound to make the departure.

In *Danvir* v. *Morse,* 139 Mass. 323, under circumstances similar to those of the case at bar, the plaintiff contended that it was the duty of the master, immediately after the accident, to sail to the nearest port where surgical aid could be given, and there to land him; but this instruction was refused, and the jury were instructed,

> "That such was not the law, and that other cir-
> "cumstances were to be regarded besides the com-
> "fort and well-being of this one person on board
> "the ship; that there was no absolute duty upon
> "the master to seek the nearest port; that *his duty*
> "*was to be ascertained upon consideration of the*
> "*circumstances bearing on the case, and he is to*
> "*decide that matter, in the exercise of a sound*
> "*judgment and discretion, taking into account all*
> "*the circumstances which are to govern his ac-*
> "*tions*"; also "that *the burden was upon the plain-*
> "*tiff to show that the master's decision was not*
> "*reasonable and proper at the time and under the*
> "*circumstances.*" (P. 324.)

In other words, the instructions pointed out that all for which the plaintiff was entitled to recover was for the *aggravation to his original injury, if any, which proceeded from the negligence of the defendants.*

These instructions were sustained by the Appellate Court, which said:

> "It was for the jury to consider the condition of "the plaintiff, the situation of the master, the ease "with which he might reach another port, the "probability of finding medical attendance, and "all other circumstances, and to determine "whether the plaintiff had sustained the burden "of showing that the decision of the master was "otherwise than reasonable and proper." (P. 325.)

In the case of *Olsen* v. *Whitney*, 47 C. C. A. 331, the master of a schooner on which the libelant was third mate, and who accidentally suffered a fracture of his leg in two places, was held guilty of negligence in not deviating from his course to a place about 500 miles distant, which he could have reached in four or five days, and where surgical aid for the libelant could have been procured, the latter having requested the master to do so. The court said, "The principal "controversy as to the facts arises between the testimony "of the master and the appellee concerning the latter's "request to be taken to the nearest port." The court said in the course of its opinion, "For the purpose of this "opinion it will be admitted that the rule requiring the "master of a vessel to go into the nearest port in order "to give the injured seaman treatment is not an impera-"tive one; that, in the nature of things, there must be "some limit to the obligation of the ship to seek aid "outside of the vessel. It depends upon the facts and "circumstances of each particular case. If Olsen had

" agreed with the master to go to Alaska, he could not " complain of the master's failure to go to Port Town- " send. In the Chandos case it was held that it could " not be assumed from the evidence that the port of " Valparaiso could have been made in less than two " weeks, and the court was of the opinion that the ves- " sel was not under obligation to make that sacrifice of " time and risk of cargo for the libelant. It would " have taken only four or five days to reach Port Town- " send. There was no cargo on board; no danger of " loss or damage on that account. The wind was fair " and favorable. There was no peril to the ship."

We take no exception to that statement of the law, but how can that statement, which necessarily concedes some discretion to the master, be reconciled with the imperative language of the same court in this case, " that it was the duty of the master to bear away to some " port of distress as *soon as possible* after the occurrence " of the accident." This, too, when the master, so far as appears, was competent and *did know* how to set the fractured bones. The fractured ribs did heal, and there is no reliable testimony that the bones of the leg were not properly set, but only that they did not unite. Nor did they unite after the respondent had been put under the care of the skillful surgeons of the marine hospital at San Francisco, even after the operation of resection had probably been performed, for Dr. White, in answer to the question whether it appeared " that he (the re- " spondent) had been properly treated at the hospital,"

replied, " As I say, I only saw the superficial wound in " his leg. I presumed he had been operated on as " shown by the history of the case." (p. 74.) "I under- " stood he was operated on for the relief of an ununited " fracture of his leg." (p. 75.)

That fractured bones, even when properly set, do not always unite, appears from the testimony of Dr. White (p. 78) that non-union may arise from a variety of causes; *inter alia,* "the interposition of soft parts, such " as tendons, muscles, blood clots, and foreign bodies." Now, it is quite evident that a surgeon, when setting bones in a case like the present, could not know whether some of these obstacles to the union of the bones were or were not interposed; so that, by whomsoever set, the bones might not from any one of those causes have united.

The questions, then, to be presented for the consideration of the Court are: 1. Was any aggravation of the libelant's injury or the subsequent loss of his leg the proximate result of *culpable negligence* on the part of the master? 2. Did his decision to proceed on the voyage, without deviating, under a just view of all the facts and circumstances, as developed by the testimony, constitute such negligence?

To determine these questions the attention of the Court is now respectfully invited to the testimony bearing upon them.

ARGUMENT.

The nature of the libelant's injury was not of a character to create alarm, in the mind of the master, as being dangerous to life or likely to result in any permanent disability. It was a simple fracture of both bones of the leg below the knee, one of these bones being so near the muscular surface that it would seem to have been easy for the master, or any person of ordinary intelligence, to have discovered the nature of the fracture, and that the ends of the fractured bones could easily be brought into apposition. The first duty of the master was to give immediate aid to the wounded seaman, and, if possible, to reduce the fracture. This the master proceeded to do; and, as he believed—and there is no proof that this belief was not, either at that time, or at any time during the voyage, well founded—brought the ends of the bones into juxtaposition. "I "bathed the leg with hot water, and set it, and put the "splints on. * * * I bandaged it tight." (P. 37.*) This is a usual method employed to keep broken bones in position after they have been set. The libelant was then placed in his bunk, and his leg kept in a slightly elevated position by putting under it a box covered with pillows. (P. 38.) "I always instructed him to "keep his leg up, elevated on that stand. I impressed "it on his mind." (P. 63.)

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*Note.—These numerals, and all succeeding ones, refer to the pages of the printed Transcript of the Record, unless otherwise noted.

After the libelant was placed in his bunk in the forecastle, which, as appears from the master's testimony—and nothing appears to the contrary—was dry, warm, and well ventilated (p. 50), the steward was instructed to give him gruel, mush, and other light food; "that " was given him about a month, * * * and there " were other things from the cabin table which were " given to him as well, that were cooked for the cabin " and given to him." (Pp. 38, 39.) * * * "I think " I must have given him that diet until after I took the " splints off, to the best of my memory. I think I gave " it to him off and on pretty nearly all the way, differ- " ent things." (P. 44.)

In answer to the inquiry whether the libelant made any request of him for different kinds of food he replied: "I don't think he made any request of me at all. " I don't remember his making any request at all for " any other kinds of food. He seemed to be satisfied " with what he got. I remember giving the steward a " can of milk every four or five days to make his gruel " with; condensed milk which we used for that pur- " pose, together with corn starch and things like that. " That was given to the steward, and my instructions " were to give it to that man." (P. 44.)

When the master did not himself dress the libelant's leg, he ordered the steward to do it. "I gave the stew- " ard directions to dress his leg, to wash it with warm " water and dress it with vaseline, and from there on " and up to the last." (P. 51.)

Q. Did he make any complaint that he was not being attended to? "No, sir; he made no complaint. He "seemed to be contented, when I asked him if he felt "all right and was satisfied. He said that he was; he "was perfectly contented; that he was getting every-"thing he wanted." (Pp. 52, 66.)

Now, of the captain's testimony respecting his treatment of the libelant, and of the satisfaction of the latter with it, there is not one statement, except the trivial matter of the salts, that is contradicted or qualified by the libelant.

Whenever the master deemed it necessary—and, for the purpose of ascertaining when it was necessary, he seems to have kept a careful watch over the man—he administered salts. (Pp. 38, 43.)

The libelant, however, testifies that he never received, in a single instance, anything except the regular forecastle food. (Pp. 28, 32.) As opposed to this testimony is not only the testimony of the master giving details as to the kind of food furnished him, but the probability arising from the humane treatment of him by the master from the time he was injured until he arrived at San Francisco, and also the entry in the official log-book, a copy of which appears on pages 41 and 42 of the transcript, which, before the end of the voyage was signed by the libelant: "I set the leg, ban-"daged the side, and administered salts and regulated "his diet." On cross examination (p. 58) the captain explains what he meant by "regulated his diet."

After he was put in the forecastle the captain visited him every two or three days from that on. "I asked him " every time I went in there how he was getting on; if " he had everything he wanted. He said he was getting " along all right. He seemed to be contented; that he " had everything he could wish." (Pp. 42, 52.)

The libelant having stated, on his cross-examination, that he sent to the captain for vaseline and salts, and did not get either, then admits that it was only on two occasions that he did not get the salts, but he always got the vaseline. (Pp. 33, 34.) Why he did not get salts as well as vaseline, if it be true that he sent for them, can be explained only by the conjecture that his request was not made known to the master. But this is an immaterial matter except as it may bear upon the veracity of the latter. The captain, in answer to a question whether he furnished him with everything he requested, answered that he did, and everything he asked for he got. He was then asked whether the libelant sent for salts on one or two occasions and did not get them. He answered: "He got everything he sent for. In fact, " he did not need to send for anything, because I went " to the forecastle and asked if he wanted anything. " When he wanted anything he got it. He did not need " to ask for salts. I asked him if his bowels were work- " ing and everything like that, to see if he was in proper " condition. When he said they were not working, I " gave him salts. *I considered it my place to attend to* " *that. He did not need to ask for anything like that.*

"*He was not given occasion to.*" (P. 43.) This testimony is not denied by the libelant except in the instances noticed above.

On the 30th of March, thirty-six days after the occurrence of the accident (p. 62), the ship then in longitude 109° west, and latitude 7° 50′ south, (see Chart, Claimant's Exhibit 2), and about 1,790 marine miles west from the coast of South America, the bandages and splints were removed by the master from the libelant's leg for the purpose of examining it, this being the earliest time after the accident that he thought it safe to do so. "I did not think it safe to take the bandages "off (before). I had to give the leg time to knit." (Pp. 42, 62.) If taken off before, he feared that the bones would separate. (P. 42.) I "found that the leg "was improving and seemed to be in pretty good con- "dition with the exception of some sores and blotches "on the leg. I thought it might be on account of the "blood settling there, like blood vessels, or blood blis- "ters, rather. * * * I washed the leg with warm "water, and a little carbolic acid in to purify it, and "dressed it with vaseline. * * * For about three "weeks I dressed it pretty near from one to two days, "* * * by taking the bandages off, washing the leg "and rubbing it with liniment; that is, where there "were no sores, and where there were sores, I dressed "it with vaseline." (Pp. 43, 62.) "His leg was as "straight as could be when I took them (the splints) "off." "Q. There was a union?" A. "Yes, sir. I felt "the leg right up and down." (Pp. 62, 63.)

In respect to the blood blisters on the leg, they do not appear to have been of a serious or unusual nature; nor, when the bandages and splints were removed, was there anything in the appearance of the leg that indicated, so far as the master could discover, that it had not been properly set. The libelant, however, testifies that his leg was loose; it had not knitted, and that it worked back and forth when the splints were off. "Q. Was that so anybody could see it? A. Yes, sir." (P. 26.)

Now, if this were true, it is surprising that not only the libelant did not call the attention of the master to it, for the "working backward and forward" of two broken bones must have been attended with such pain and suffering, that it is difficult to believe he would, not have done so, but still more surprising that the latter did not see it when he examined the leg for the purpose of ascertaining its condition, for, as the libelant said, "anybody " could see it."

It sufficiently appears from the testimony of the master that the libelant was, in every respect, treated by him with consideration and kindness, and there is nothing in the testimony of the libelant to indicate anything to the contrary. This view was entertained by the district judge: "The libelant was treated with kindness by " the master at all times after the accident, and had all " the care that it was possible for one in his situation to " receive on board of a vessel at sea, when unattended " by anyone possessing surgical knowledge and skill." (Opinion, p. 110.) This treatment is to be taken into

18652

consideration as material to the question whether the master acted toward the libelant in good faith, and testified truly when he said that he could have shaped a course for Valparaiso, but did not do so because the libelant was apparently "entirely getting along all right. "I thought the leg would be all right when we got here. "* * * I did not think it necessary to put away. I "did not see any need of it. I did not think he could "get any better treatment than I could give him myself "at the time"; and that he was of opinion that the leg was getting along all right and knitting successfully. (P. 50.)

The places where he could have been landed:—

1. Among other places the Appellate Court held that "*the vessel could have returned to Port Stanley, the "chief port on the East Falkland Island.*"

This we understand to mean that it was his duty to do so.

From and including the 23d of February up to the 1st of March, the ship had made about 360 miles to the northward and westward from the point where the accident happened. During all of this time there was nothing to indicate that the libelant was not getting along all right; he thought that he was, and so did the master. No special circumstances connected with his injury were developed to indicate that, for the purpose of securing surgical aid, it was necessary or advisable to put the ship about and proceed to Port Stanley, distant

about 480 miles, on a direct course, to the northward and eastward of Cape Horn.

Captain Thompson testified that at the season of the year when the accident occurred the weather was changeable from fine weather to heavy gales from the westward; that in sailing from Port Stanley to Cape Horn the prevailing winds were head winds; that he had been around Cape Horn sixteen times as master and seaman. When asked whether or not he was able, as a seaman, to form any judgment as to the length of time it would have taken for him to have gone to Port Stanley and get back to the place where he laid his course for Port Stanley, replied, "That is pretty hard " to tell. It is kind of difficult to make a passage, that " is, to get from there around Cape Horn. There are " generally westerly winds, and it is pretty hard to beat " in that weather. The chances are it would have taken " three or four weeks to make that distance. * * * " We know what weather to expect there." That he might have reached there, from the point of the accident, in three or four days; that the wind was fair for him to have gone there. (Pp. 45, 46.)

The learned judge of the District Court, referring to the length of time it would have taken to have gone there, said: "The testimony of the master of the 'Iro- " 'quois,' which, I think, should be accepted upon this " point, was to the effect that it probably would have " taken from three to four weeks to have gone to Port " Stanley and returned to the place of the accident, be-

"cause in returning the vessel would have had to beat "against a head wind." (Opinion, Trans., p. 109.)

The Appellate Court, however, said: "We think this "more than a liberal allowance for probable delay and "adverse winds." (P. 128.)

Counsel for the respondent, in their brief in opposition to the petition for the writ of *certiorari,* endeavored to show that the ship could have gone to Port Stanley in the Atlantic Ocean and returned to the point in the Pacific Ocean where the accident happened, in less than nine days after the event, by assuming that from the 23d of February to the 4th of March the winds which prevailed from Cape Horn to Port Stanley on the Atlantic Ocean were, in respect to direction and force, precisely the same as those that prevailed during the same period of time on the Pacific Ocean between the place of the accident, in longitude 87° 30′ west, latitude 50° 30′ south, the position of the ship at 12 M. on the 4th of March. And that the vessel, in going to and returning from Port Stanley, would cover the same distance in miles that she covered between those days when on her course from the place of the accident toward San Francisco. The bare statement of such a proposition, founded, as it is, on mere conjecture, is sufficient to expose its fallacy.

It is not alone the loss of time that is to be taken into account in judging of the conduct of the master in not proceeding with the respondent to the Falkland Islands. The danger to ship and cargo in making such a devia-

tion is to be considered. The weather off Cape Horn and in that vicinity even during the months of February and March is always more or less stormy. As at any hour heavy, dangerous gales were likely to arise, it must, therefore, have been an extreme necessity, clearly apparent, which would have justified the master of the ship to have exposed it and its cargo to such dangers by twice going around Cape Horn, as he must have done in going to the Falkland Islands and returning to the point on his course from whence he had deviated.

2. *"The ship could have made Evangelist Island by "sailing one or two days out of her course. From that "island it seems the appellee could have been taken by "steamer to Valparaiso."* (Opinion, Trans., p. 128.)

It appears from the testimony of Carrescio (p. 98) that there was a lighthouse there; that "if a *passing* "*vessel* makes a sign, the lighthouse will send a boat"; that if a man is landed there, he might be taken by some such vessel to "Valparaiso, or to Sandy Point" in the Straits of Magellan, 180 miles to the eastward of the entrance, on the Pacific Coast, to those straits. (See Chart, Claimant's Exhibit 2.)

While it is true that the master could have deviated from his course and probably reached the Evangelistas in latitude 52° 24′ 30″ south, longitude 75° 24′ 15″ west (see Claimant's Exhibit 2), with a loss of time not exceeding two days, because on the 2d of March he was within 180 miles of these islets, yet if the master thought of landing the respondent at that place, and had con-

sulted the "Directory for Navigation of the South Pa-
" cific Ocean," a standard work by Alexander George Findley, and which, presumably, he possessed, he would have gained the following information: "Los Evangel-
" istas, consisting of four rocky islets and some detached
" rocks and breakers * * * are very rocky and
" barren, and suited only to afford a resting place or
" breeding haunt for seals and oceanic birds, but a land-
" ing place may be found on one of them" * * * (p. 45), with "a lighthouse on the southernmost one" of them. (Addenda to 2d ed., p. 7.) Certainly not a very promising place in which to leave an injured seaman who needed care and attention.

But if landed at this lighthouse, who was to take care of him while waiting there to try the doubtful experiment of getting passage on some passing steamer to Sandy Point in the Straits of Magellan, or to Ancud de San Carlos, or to Valparaiso? Certainly the captain could not have followed the suggestion of the laws of Oleron and "hired a woman to take care of him," or, for that purpose, "spared him one of the ship's boys," a seaman, without, perhaps, rendering his ship short-handed, and, in this respect, unseaworthy. If he could have left one of the crew, then the latter must have volunteered to remain, because the master had no power or authority to "force him on shore" for that purpose, or to "leave him behind" against his will and consent. Then, how was he to make his wants known unless the captain furnished an interpreter, for it may be well

enough assumed that neither he nor the seaman, if any, left with him could speak the Spanish language, the language of the country. The chance of getting a passing steamer to take him on board at the lighthouse and convey him to some port where surgical aid could have been obtained is exceedingly doubtful. The master of a passing steamer would most likely refuse to take a wounded and comparatively helpless man on board of his vessel, or, if he did, then, perhaps, only at a large price, for the payment of which, the amount being unknown, it would have been impossible for the master to have made provision. Under such circumstances, to have landed the man at this place, assuming that it could have been done, would have been inexcusable. For such an experiment or purpose the master would have no right to have left him there. The seaman is bound to the ship, and the ship is bound to the seaman; and he is not to be separated from it except under circumstances of stringent necessity.

If, by chance, he could have obtained a passage either to Sandy Point or to Ancud, at neither of which places, so far as appears, was there an American or other consul,—and the probabilities are that there were none,—then who was to make arrangements for medical or other attendance for him, or for nursing, care, and sustenance? Evidently, no one; so that if, under such circumstances, he had been carried to either of these places, it might have been said, verily, "the last state " of this man is worse than the first."

3. *"The 'Iroquois' herself could have made the port "of Valparaiso with a loss probably not more than four "or five days on her voyage."* (Opinion, Trans., p. 128.)

As to the length of time that it would have taken the ship to have reached Valparaiso, Captain Thompson testified, "It is very hard to tell. I might have got to "Valparaiso in a month. Maybe inside of a month. "I could not have shaped my course for Valparaiso "until I got around the Horn * * * from say "about 80° west longitude and 50° south." That as to the length of time that it would have taken him to have reached Valparaiso provided he had taken the best course that he could, "It is pretty hard to figure on. I do "not know. The nearest I came to Valparaiso at any "time was six hundred miles." (Pp. 46, 47, 48.) Had the ship been in longitude 80° west, latitude 50° south where she could have first laid a course for that port (p. 47), and sailed on a direct line for it in longitude 71° 37′ 23″ west, latitude 33° 1′ 53″ south, the distance to that port would have been about 1,085 miles; but as the ship could not have sailed on a direct course to that port unless she had a fair and constant wind, it is impossible to calculate what distance the ship would have had to sail in order to reach it, nor, consequently, the time occupied in reaching it, because this must necessarily be in great part based on mere conjecture as to what the force and direction of the wind would be, especially when nearing the South American Coast.

Counsel for respondent in their brief, filed in opposition to the granting of the writ, have attempted to show that the vessel could have deviated to Ancud de San Carlos or to Valparaiso, and returned to the course from which she deviated with a loss of time not exceeding four or five days. To arrive at this result they have conjectured, or rather contend that the master should have conjectured, that when in latitude 55° south, longitude 75° west, he would have the same winds, in respect to direction and force, that he thereafter did have, and that he should have further conjectured that these winds, as to direction and force, would extend to and along the South American coast, at least six hundred miles to the eastward of his course, and that after he had arrived at one or the other of these ports, as the case might be, the same winds would, in all respects, prevail, and so continue until he had again reached the course from which he had deviated. To illustrate this proposition they have transposed from a copy of the master's charts (Claimant's Exhibits 2 and 3) the profile of the course, on which he sailed toward the equator, to a point one hundred miles distant from and along the coast of South America to Ancud and to Valparaiso. (See Libelant's Exhibits 4 and 5.) Argument is not needed to show the fallacy of this proposition. It was apparent to Mr. Corracio, who made the drawing on Libelant's Exhibits 4 and 5, for when asked at what rate he calculated the speed of the vessel to have been, he answered, "I supposed,

"going near the land, touching at Ancud or touching "at Valparaiso; I supposed he had just the same condi- "tions. *That may not be true.* It may be favorable to "us, or not favorable to us. I supposed we had the "same conditions. The wind was fair for us." (P. 104.)

Now we have devoted more time to this subject than would, perhaps, have been necessary had it not been, as it seems to us, quite apparent that the Appellate Court adopted this theory of counsel for the respondent; otherwise we do not see how it could have reached the conclusion that the vessel "could have reached the "port of Valparaiso with a loss of not more than four "or five days on her voyage," and would have reached the port of Ancud "with about the same loss of time," this port being 540 miles to the southward of Valparaiso. Except this, we cannot discover anything in the testimony that would justify such a conclusion. On the contrary Mr. Corracio says that from latitude 55° south, longitude 75° west,—the position of the vessel on the first of March—the ordinary passage of a sailing vessel would be to Valparaiso fourteen or fifteen days, and to Ancud seven or eight days. (Pp. 95, 96.)

In this connection we think that what was said by Judge Deady in the case of the "Chandos," 6 Sawyer, 550, is pertinent.

It is claimed "that it was the duty of the master un- "der the circumstances to have gone into the nearest "port, Valparaiso, where it is admitted that proper "surgical aid and appliances could have been obtained. "Upon the evidence it is very uncertain what time it

" would have taken to reach Valparaiso from the place " where the accident occurred—a distance of eighteen " degrees east and five degrees north. Counsel for the " libelant argues that it might have been done in eleven " days, but the calculation upon which this conclusion " is based assumes that the vessel might have changed " her course from about northwest to east and made " about four miles an hour to Valparaiso.

"Now there is no evidence in the case as to the force " or direction of the wind between the locality of the " accident and the latter place, and we are therefore " left almost to conjecture as to the time that would " have been consumed in making the detour. The bur- " den of proof is upon the libelant to support his alle- " gation that the master failed to do his duty towards " him in this respect. If it had been shown that the " vessel could, under the circumstances, make about ten " miles an hour, and thereby have made Valparaiso in " a little more than five or six days, it might have been " proper for the master to have gone in there; indeed, I " think it would have been his duty to do so. But as it " is, I do not think it would be safe to assume that this " port could have been made in less than two weeks, and " I do not think that the vessel was under obligation to " make that sacrifice of time and risk of cargo for the " libelant."

The cases, *Scharff* v. *Metcalf,* 107 N. Y. 215; *Olsen* v. *The "Scotland,"* 42 Fed. R. 925; *The City of Carlisle,* 39 Fed. R. 807; *Brown* v. *Overton,* 1 Spr. 462, we respectfully submit, are not authorities for the decree in this case.

In *Scharff* v. *Metcalf* the vessel was bound from New

York to Sagua La Grande. On the voyage a seaman received an injury which culminated in an aneurism of the popliteal artery. On reaching the Cuban port a physician who was consulted informed the captain that a surgical operation and not medicine was needed for the cure, and recommended the removal of the seaman to a hospital, or, at least, to obtain some suitable place on shore with provisions usual in such cases for his support on shore; that it was dangerous to carry him back to New York without an operation, if a delay exceeding twelve days was to be incurred; the master refused this request and kept him on board until the homeward voyage was begun and ended, and more than twenty days after the doctor's warning of the dangerous condition of the wounded man landed him in New York, placed him in a hospital where amputation became necessary because of the long delay and the destructive progress of the disease. Under the foregoing facts it is clear that the master violated his duty. He had been apprised of the dangerous nature of the injury by the doctor, the necessity of a surgical operation, the danger of delay in performing it, and the facilities for performing it without in any manner delaying the business of the voyage. These facts brought the case directly within the scope of the modern, and the letter of the ancient, sea laws.

Olsen v. *The "Scotland"*: The libelant had shipped as an able seaman at the port of Antwerp, where the vessel then was, and while mounting a ladder to get

on board with a bag of clothes on his back, lost his balance, fell into the water, and dislocated his shoulder. He complained to the master that his shoulder was out of joint and gave him great pain. He was answered roughly, and no further attention was given to him. Afterwards, when the vessel stopped for two days at Flushing, and again, subsequently, at the Downs, where the vessel was detained two weeks, he requested to be put on shore for treatment. The captain made no examination of his arm until three or four days after he got to sea, and then declared it to be an old wound for which he could do nothing. On arrival at New York two months afterwards he went to a hospital where the operation of resection was performed, and the arm put in place. The court held that the master was fully notified of the injury, and that it was his duty to have given the libelant such treatment as the circumstances offered, and there was abundant opportunity for this both at Flushing and at the Downs. The omission to do this was negligence, for which the ship was liable.

City of Carlisle, 39 Fed. R. 807, 814: The libelant, a lad of about sixteen years of age, serving as an apprentice on board the vessel, and bound from Liverpool to Portland, Oregon. When the ship was at a point in the Atlantic Ocean about 332 miles to the eastward of Rio de Janeiro, the libelant was struck on the head by a clue iron, which "fractured and depressed his "skull, from the effect of which he fell on the deck."

The conduct of the master of the ship toward the libelant and his wilful neglect of him after the accident, as appears from the opinion of the court, was atrocious, and seems to have been actuated by malice *in fact.* In referring to the question of the duty of the master to have deviated to Rio de Janeiro, the court said, "On "the question of going to Rio de Janeiro for surgical aid "for the libelant, I do not feel warranted from the state "of the evidence as to the wind in holding that it was "the absolute duty of the master to make the deviation, "although I am much inclined to think he might prop- "erly have done so." Later on the master might have gone into Montevideo or the Falkland Islands without going one hundred miles out of his way.

Brown v. *Overton,* 1 Sprague, 462: In this case both the legs of the seaman were broken below the knee. The bones were not properly set, one being helplessly twisted out of shape, which the master, if he took any proper care of the man, must have known. The master intended to make the Island of St. Helena for the purpose of correcting his longitude, and did pass within forty miles of it, and could then have reached it in eight or ten hours. If he had shaped his course for that port, he could have reached it, consulted with the American consul there, and obtained surgical aid and advice, with only a few hours' detention; but he decided not to go there, and assigned as a reason for not doing so that it would have occasioned expense.

In no one of those cases were the broken bones properly set and kept in place, as, we submit, was done in this case. In no one of those cases was it declared to be the duty of the master to *at once* seek a port of distress when the seaman was injured. In no one of them was the exercise of reasonable discretion denied to the master.

Finally, the decision in the case at bar is far reaching in its effect and application. The rule requiring the master of a ship, *as soon as possible,* after a seaman has sustained some corporal injury, to deviate from the course of the voyage to some port or place where surgical aid can be procured for him, although the master may, under the circumstances, believe it to be unnecessary to do so, is equally applicable to injuries other than of broken bones. Accidents at sea to seamen are as common as the storms and tempests that usually cause them, and though they may not result in broken bones, yet other injuries, such as cuts and contusions, not apparently severe, may, if not properly cared for, result in blood-poisoning, which is usually fatal, or in some other serious consequences. It is also applicable in case of disease, whether pronounced in its type or in its incipient stages, of the symptoms of which the master may be ignorant, and which he may be more incompetent to treat successfully than the reduction of a simple fracture or dislocation. Besides, suppose there is a succession of accidents—not an improbable supposition—of a nature similar to that in the present case, then it

would be his absolute duty in each case, as it occurred, to bear away to some port or place to procure surgical aid. Thus the voyage would be indefinitely prolonged and danger to the ship, crew, and cargo correspondingly increased.

We respectfully submit that the master of a ship who, "from time immemorial, * * * is expected to act "as physician and nurse, according to his ability, in "cases of sickness or accident," is, in a case like the present, not imperatively bound to deviate from the course of the voyage, but is entitled to use his own judgment, as to the necessity of doing so, to the same extent as in other emergencies which may arise in the course of the voyage, and that if after a careful and intelligent consideration of all the conditions and circumstances of the case as then presented to him, he should come to the conclusion that it is unnecessary to deviate, he cannot properly be *charged with negligence,* even if subsequent events may indicate that a different course than that so determined upon might have been better. If the conditions at the time justified his acts, neither the master nor the shipowners can be properly held liable in damages because, for some reason not at the time apparent, or then to be reasonably anticipated, the expected result does not ensue.

Respectfully submitted,

Milton Andros

Attorney for Petitioners.

Service of a copy of the foregoing brief acknowledged this 30th day of December AD 1903.

A. H. Ricketts

Attorney for Respondent
Matthew Bridges.

In the

Supreme Court of the United States

October Term, 1903

THE SHIP "IROQUOIS," ETC.,
A. CHESEBROUGH ET AL.,
Petitioners,

vs.

MATTHEW BRIDGES,
Respondent.

Brief on Behalf of Respondent

in opposition to the petition for a writ of certiorari.

A. H. Ricketts,
Counsel for Respondent.

W. G. Holmes,
D. T. Sullivan,
Proctors for Respondent.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE SHIP "IROQUOIS", ETC., A. CHESEBROUGH ET AL., vs.	Petitioners,	No.
MATTHEW BRIDGES,	Respondent.	

BRIEF ON BEHALF OF RESPONDENT.

At the time the respondent's leg was broken the ship "Iroquois" was a few miles to the southward of Cape Horn and distant about 480 miles southwesterly from Port Stanley, the chief port of East Falkland Island, where surgical aid could have been obtained. The wind was fair for that port, and the Judge of the District Court found it could have been made in two or three days (trans. p. 109), but his statement, in accepting the testimony of the master of the "Iroquois" that it would probably have taken from three to four weeks to have gone to Port Stanley *and return* to the place of the accident, is opposed to the entries in the mate's log-book (see page 2 of Book of Exhibits), which gives the direction of the winds prevailing after the accident.

The loss of time of such procedure is not a matter of conjecture. The accident occurred on February 23, 1900. If it would have taken so long as three days to go to Port Stanley, the return to the place of the accident could have begun on February 26. On that day the winds were such that the vessel made 127 miles in a southwesterly direction (claimant's Exhibit No. 2). On February 27 and 28 and on March 1 she would have had head winds on her return, but would have made some progress. On March 2 the wind changed to south, southeast and east, and on March 3 it was east and east-southeast. On both of said days and thereafter the winds were fair for a southwesterly course from Port Stanley to the place of the accident. Not considering any progress the vessel might have made on such return during February 27 and 28 and March 1, she could have reached the place of the accident, with the favorable winds of February 26 and of March 2 and 3, within nine days after the accident.

As a matter of fact, according to the evidence of the chart (claimant's Exhibit No. 2), the winds during February 23, 24 and 25, while fair winds for a course to Port Stanley, were unfavorable for the vessel's progress into the Pacific, and at the beginning of February 26 she was further east than she was at the beginning of February 23, thereby losing three days, so that had the vessel gone to Port Stanley the actual loss of time, going and returning, would have been not more than six days.

It is evident that the Court of Appeals was unwilling to accept the testimony of the master of the "Iroquois",

that it would probably have taken from three to four weeks to have gone to Port Stanley *and return*, as that Court says (trans. p. 128): "The District Court found " that to have returned there would have involved a " loss of time of three or four weeks, and in so finding " made, we think, more than liberal allowance for prob- " able delay and adverse winds."

The master, however, was not limited to Port Stanley as a place to land the respondent. With small loss of time he might have gone to either of several places, after rounding Cape Horn.

The vessel could have made Evangelistas or Direction Island on March 2 or 3, by sailing one or two days out of her course. Evangelistas Island, as shown by claimant's Exhibit No. 2, is near the westerly end of the Straits of Magellan. On said island is a lighthouse, and a signal from the vessel would have brought a small steamer to her and the respondent could have been taken to said island and placed on one of the line of steamers plying between Valparaiso and Sandy Point, and touching semi-weekly, going and returning, at said island. Sandy Point is on the northerly side of the Straits of Magellan, and surgical aid could have been had there. If the respondent had been landed at Evangelistas Island he could have been taken to Sandy Point within a few days, or to Valparaiso within two weeks, after the accident, and the ship "Iroquois" could have proceeded on her course from Evangelistas Island with a loss of little more than one day on her voyage (trans. pp. 97, 98 and 99).

On March 1 the vessel was about latitude 55 degrees

south, longitude 75 degrees west. With the same winds encountered by the vessel thereafter, she could have made the port of Ancud, in Chili, in latitude 42 degrees south, or thereabouts, on March 9, and from Ancud, as delineated on the chart (libelant's Exhibit No. 4), could have reached the course she took to the equator with a loss of time in her voyage of only four days.

With the same winds encountered by the vessel after March 1, she could have made the port of Valparaiso, in latitude 33 degrees south, or thereabouts, on March 15, and from Valparaiso, as delineated on the charts (libelant's Exhibits Nos. 4 and 5), could have reached her course to the equator with a loss of time in her voyage of only four days.

The charts (libelant's Exhibits Nos. 4 and 5) are duplicates of the charts (claimants' Exhibits Nos. 2 and 3), except that they also have traced on them by Mr. Carrescio, formerly an officer in the Chilian navy, the daily courses and distances the "Iroquois" in all probability approximately would have made, if on March 1 she had borne away for either Ancud or Valparaiso, and thence had proceeded from either of those ports to the course she actually pursued, and also the small loss of time in the voyage. Such tracings were made with reference to the winds encountered by the vessel after March 1 (trans. pp. 99, 100 and 101). Mr. Carrescio testified that in the month of March the winds are fair, on the courses so delineated, for reaching Ancud and Valparaiso, and that along that coast there is a current, called Humboldt current, running north about one mile an hour (trans. p. 95).

The Court of Appeals found (trans. p. 128) that the "Iroquois" could have made either Ancud or Valparaiso with a loss of time in her voyage of only four or five days.

If the "Iroquois" had borne away for Ancud or Valparaiso at a proper time, she would have taken a northerly or northeasterly course, and from either of those ports she would have taken a northwesterly course to the equator, and during all such times would have been advancing towards San Francisco, her port of destination, and in her course to Ancud or Valparaiso it is probable, in fact reasonably certain, that she would have met steamers bound to Valparaiso, Sandy Point or other South American ports, where the respondent could have been taken for surgical treatment (trans. p. 97).

If, under the favorable circumstances of winds, weather and positions presented by the evidence in the case at bar it was not the duty of the master of the "Iroquois" to seek surgical aid for the respondent, it is difficult to conceive conditions on a voyage from New York to San Francisco which would make such a duty imperative.

The language of Judge Sprague in *Brown* vs. *Overton*, 1 Sprague 462, Fed. Case No. 2024, is particularly pertinent to this case:

> "Scarcely a case can be presented where the obligation to land an injured seaman applies with greater force than the present."

In *Peterson* vs. *The Chandos*, 4 Fed. R. 645, the vessel, when the fall of a seaman from aloft caused a fracture of the femur, was in latitude 38 degrees south,

longitude 90 degrees west. A difference of opinion existed on board as to whether the leg was broken or not. The master testified that until 24 days later, when the vessel was north of the equator and 20 degrees further west, he did not think it was broken. The voyage was from New York to Portland, Oregon. Judge Deady found that it was very uncertain what time it would take to reach Valparaiso from the locality of the accident, *there being no evidence of the force or direction of the wind between those places.* He said (p. 652):

> "If it had been shown that the vessel could, under the circumstances, make about ten miles an hour, and thereby make Valparaiso in a little more than five or six days, it might have been proper for the master to have gone in there—indeed, I think it would have been his duty to do so."

The "Chandos", like the "Iroquois", was a ship with a full cargo. If it were the duty of the master of the "Chandos" to make such sacrifice of time and risk of cargo for his seaman, notwithstanding he did not think the leg was broken, how much greater the obligation in the case of the "Iroquois", where there was no doubt as to the severity of the injury, and where the master had a choice of available ports to which he could have taken the respondent.

The master of the "Iroquois" would have performed his duty if he had *honestly endeavored* to reach a port of distress. As he made no such endeavor, the contention of petitioners that the time of a deviation (such as we allege should have been made) is problematical, is unworthy of consideration. If he had endeavored to make a port of distress it would have been ascertained

what could have been accomplished. If his wife or child had been with him and had suffered an injury similar to that of the respondent, or if his vessel had been in need of a spar, we doubt not he would have gone to a port of distress. The respondent, in the performance of the duty he owed to his employers, had exposed his life and limbs for the preservation of the vessel. The footing of a seaman on the mainyard while he is assisting in furling a mainsail is insecure in a high degree against the force of a gale of wind, and yet, when the respondent, under such conditions, lost his footing and received the injury he did, the master with all his opportunities to secure surgical aid for him, at a small expense to his owners and with a loss of only a few days' time, chose to risk bringing him to San Francisco and to expose him to the mortification likely to take place while passing through the tropics and to the accidents and discomforts inseparable from the unceasing motion of a ship at sea, and daily removals from his bunk for the performance of acts of nature, and entailed on him weeks of protracted and unnecessary suffering and the loss of a leg, and assigned as a reason (trans. p. 50) that he did not think it necessary to go into any port as he did not think the respondent could get any better treatment than he could give him. We submit that such testimony was a mere subterfuge and a sham, manufactured as an excuse for not going to a port of distress. The master admits (trans. p. 60) that there was nothing to hinder his going to Valparaiso or to any of the other ports referred to, except the expense to his owners and that such ports were out of the line of his course to San Francisco.

As said by Judge Sprague in *Brown* vs. *Overton* (*supra*), referring to the excuse of a master that his deviation to land an injured seaman would have occasioned expense:

> "This presents not the least extenuation. It is merely saying that if he had performed his duty, the owners would have been subjected to a burden which the law imposes."

And by the same Judge, referring to that master's doubts of any benefit to the seaman if he had landed him:

> "Any doubts would have been removed if the master had performed his duty. By going into port, it would have been ascertained what could have been accomplished."

The petitioners say (p. 2 of petition) that the master put *proper splints* on the respondent's leg. The master says (trans. p. 37) that he got the *splints* at the carpenter's shop, and (trans. p. 63) that he put the *splints* on. We do not doubt they were as good as the carpenter shop of a ship at sea could be expected to furnish, but we cannot agree that they were *proper*, except that they were the best *then* available.

Counsel for petitioners, both in the petition and in his brief, seeks to distinguish the master of the "Iroquois" as a commander of due discretion, reasonable, prudent and humane, uninfluenced by selfish motives, and completely faithful to his obligations to the respondent in bringing him crippled to San Francisco, and praises his surgical skill as well as his general treatment of the respondent after the injury. The master's first examination of the injured leg, after his attempt to set it, was on March 30, five weeks after the

accident, and when, as shown by the charts, claimant's Exhibits Nos. 2 and 3, the vessel was as near to San Francisco as to Valparaiso, and the master's opportunities to land the respondent in time to save his leg were gone. We submit that the degree of the master's care of the respondent after the accident is not to be measured by the vaseline supplied on and after March 30, for the relief of respondent's sores, then first discovered by the master, or by the salts, the administration of which to respondent is so highly commended by petitioners' counsel. The master testified (trans. p. 62) that when he did not dress the leg the steward did. Such dressing was not begun until March 30, when the bandages first were removed. He assigns as his reason for not removing them before (trans. p. 43) that he did not think it was safe to take the bandages off and that he had to give the bones time to knit. The testimony of Dr. White (trans. p. 81), and of Dr. Lawlor (trans. p. 86), shows that a surgeon would have removed the splints four or five days after first putting them on, and at intervals of a few days thereafter, for the purpose of examining the leg and determining whether the bones were properly in place and uniting. If on March 1, or at any other proper time thereafter, the bandages had been removed, manipulation of respondent's leg would have indicated whether the broken bones then were in place. During the five weeks prior to March 30 the master had no sensible basis for any conclusion as to respondent's condition. He was content to assume the leg was getting along all right and testified (trans. p. 62) that on March 30, when he first removed the bandages there was a union of the bones. The respondent

testified (trans. p. 25) that after March 30, his leg was dressed by himself and his shipmates in the forecastle and (trans. p. 26) that when the splints were off his leg was "loose" and "worked back and forth", "so that any body could see it". Dr. White, who amputated the leg and treated it a good portion of the time while respondent was in the hospital, also testified (trans. p. 77) that there had been no union, and the history of the case is to the same effect. The District Court (trans. p. 109), and the Court of Appeals (trans. p. 126) wholly discredited the master's testimony in this regard, and found that the fractured bones had failed to unite. A very erroneous meaning is given to Dr. White's testimony on page 4 of the petition. When Dr. White testified (trans. p. 74) that when the respondent came under his care there was nothing about the leg to indicate that he had not been properly taken care of and that "he looked as though he had been properly cared for", such testimony referred only to the period during which the respondent was at the hospital prior to time the witness took charge of him, and was in answer to questions relating to that period only.

We urge upon the Court that the master had no right to speculate on the chances that the respondent's leg *might* be properly set and *might* remain so, and that the respondent *might* recover on board the vessel, when he had opportunities, with very little delay to the vessel, to place him where he could have been properly treated and his leg saved to him beyond a peradventure. The results of such speculation are the loss to the respondent of a leg, and all its consequences during the ensuing 41 years of his expectancy of life. The

respondent was 21 years old when this cause was heard in the District Court (trans. p. 21). See "The American Table" (trans. p. 122) used by the Mutual Life Insurance Company of New York in estimating the longevity of applicants for insurance (trans. p. 69).

What was thought by the respondent's shipmates is to be found on page 30 of the transcript.

We quote from page 818 of *Bryant's Practice of Surgery*, third American edition, 1881, a standard work, as testified (trans. p. 82) by Dr. White:

> "The principles of the treatment of fractures are very simple, though the practice is often very difficult. To restore a bone to its normal position, and to keep it there by means of surgical appliances, or as John Hunter expressed it in 1787, 'to place the parts in a proper position by art, that is, as near their natural position as possible, and keep them so', are simple rules to be observed, but to carry them out often demands the highest surgical skill and ingenuity, and yet the whole treatment of fractures is really comprised in these two indications."

Dr. White (trans. pp. 76 and 77) and Dr. Lawlor (trans. pp. 83 and 84) testified that if simple fractures, similar to those of the respondent, were first treated by a surgeon even four weeks after they were received, the bones would unite, and that broken bones of a person of the age of respondent, other conditions being the same, would unite more readily than those of an older person. These witnesses also testified (trans. pp. 80 and 87) that union is complete about six weeks after the fracture, in the case of a simple fracture properly treated. The respondent had no constitutional disease (testimony of Dr. White, trans. p. 76).

We are not referred to any case, and we know of none other than the one at bar, in which the Court has deemed it necessary to speculate on what *might* have been the delay to a vessel *after* her departure from a port of distress, if she had gone to such port. We submit that if an injured seaman require surgical aid, and if such aid cannot be given him on board his vessel, and if there is an available port to which he can be taken, the obligation of the master to take him to such port arises, and that the time involved in *going* to such port determines its availability. The District Court and the Court of Appeals found each of these three conditions in the case at bar, and we would be content to allow the petition herein to be submitted without filing a brief in opposition, but for the elaborate presentation of the case to this Court by the petitioners.

Though the master be held to be a fellow-servant of the seaman in the navigation of a ship, he is not such fellow-servant

> "in respect to the owners' duty to the seamen which the master performs in their behalf and as the owners' representative * * * and when such duty is not performed and the seaman suffers injury from such neglect the ship in a proceeding *in rem*, and the owners in a suit against them, are liable for the damages suffered—"

Scarff vs. *Metcalf*, 107 N. Y. 211, 216,

where the cases on this point are cited by the Court. This case is cited by petitioners. It is a case in which by a master's neglect to call a surgeon a seaman lost a leg by amputation.

In *Danvir* vs. *Morse*, 139 Mass. 323 (a case cited by petitioners), the Court says:

> "So much of the instructions as requested the Court to rule that, if the master believed, though there would be delay in carrying the plaintiff to the port of destination, it would not be a serious delay, nor involve any serious result, then the master was not in fault in deciding as he did, was properly refused. This would have left the matter depend entirely upon the judgment of the master, if honestly exercised. Under the instructions given it was for the jury to consider the condition of the plaintiff, the situation of the master, the ease with which he might reach another port, the probability of finding medical attendance, and all other circumstances, and to determine whether the plaintiff had sustained the burden of showing that the decision of the master was otherwise than reasonable and proper, which was the true rule."

The Wensleydale, 41 Fed. R. 602 (also cited by petitioners), is a case of sickness on board a vessel and of the unwillingness of the libellant in that case to take the food provided for him. Judge Benedict, in dismissing the libel, said:

> "The facts in the case forced the libellant to rest his right to recover upon the proposition that the failure of the ship to provide a physician or a nurse, competent to prepare food calculated to tempt the appetite of the sick man, and able to compel him to take the nourishment, was neglect of the duty owing by the shipowner to the seaman."

In the *City of Alexandria*, 17 Fed. R. 390 (cited by petitioners), Judge Brown said (p. 395):

> "Misconduct or neglect by the officers in the treatment of the seaman, after he has been wounded in the service of the ship, becomes a dif-

ferent and additional cause of action against the ship, because a legal obligation to him then arises to afford suitable care and nursing; and if this be neglected the ship may be held to consequential damages" (citing cases).

In conclusion, we respectfully submit that the petition for a writ of certiorari should be denied.

A. H. Ricketts
Counsel for Respondent.

W. G. Holmes,
D. T. Sullivan,
Proctors for Respondent.

Service of above and receipt of copy thereof admitted at San Francisco, this 14th day of January, 1903.

Milton Andros
Counsel for Petitioners.

No. 200.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1903.

A. CHESEBROUGH et al., Owners and Claimants of the Ship "Iroquois",
Petitioners,

vs.

MATTHEW BRIDGES,
Libelant and Respondent.

BRIEF ON BEHALF OF LIBELANT AND RESPONDENT.

On December 22, 1899, the American ship "Iroquois" sailed from New York on a voyage to San Francisco. During the voyage, on February 23, 1900, the libelant, while assisting in furling the mainsail, fell from the main-yard to the deck. The fall caused fractures of the tibia and fibula of his right leg, besides other injuries. At the time of the accident the vessel was in latitude 56 degrees 50 minutes south, longitude 67 degrees 36 minutes west, a few miles to the southward of Cape Horn, and libelant

thereafter the winds were fair for a southwesterly course from Port Stanley to the place of the accident. Not considering any progress the vessel might have made on such return during February 27 and 28 and March 1, she could have reached the place of the accident, with the favorable winds of February 26 and of March 2 and 3, within nine days after the accident.

As a matter of fact, according to the evidence of the chart (Claimants' Exhibit No. 2), the winds during February 23, 24 and 25, while fair winds for a course to Port Stanley, were unfavorable for the vessel's progress into the Pacific, and at the beginning of February 26 she was further east than she was at the beginning of February 23, thereby losing three days, so that had the vessel gone to Port Stanley the actual loss of time, *going and returning*, would have been not more than *six days*.

It is evident that the Court of Appeals was unwilling to accept the testimony of the master of the "Iroquois" that it would probably have taken from three to four weeks to have gone to Port Stanley *and return*, as that Court says (Trans. p. 128): "The District Court found "that to have returned there would have involved a "loss of time of three or four weeks, and in so finding "made, we think, more than liberal allowance for prob-"able delay and adverse winds."

The master, however, was not limited to Port Stanley as a place to land the libelant. With small loss of time he might have gone to several places, after rounding Cape Horn.

The vessel could have made Evangelistas or Direction Island on March 2 or 3, by sailing one or two days out of her course. Evangelistas Island, as shown by Claimants' Exhibit No. 2, is near the westerly end of the Straits of Magellan. On said island is a lighthouse, and a signal from the vessel would have brought a small steamer to her and libelant could have been taken to said island and placed on one of the line of steamers plying between Valparaiso and Sandy Point, and touching semi-weekly, going and returning, at said island. Sandy Point is on the northerly side of the Straits of Magellan, and has a population of about 2,500. If libelant had been landed at Evangelistas Island, he could have been taken to Sandy Point within a few days or to Valparaiso within two weeks after the accident, and his vessel could have proceeded on her course from Evangelistas Island with a loss of little more than one day in her voyage (Trans. pp. 97, 98, 99).

On March 1, the vessel was about latitude 55 South, longitude 75 West. With the winds encountered by the vessel thereafter, and prevailing in the month of March (summer time in that latitude), she could have made the port of Ancud, in Chili, in latitude 42 South, or thereabouts, on March 9, and from Ancud, as delineated on the chart (Libelant's Exhibit No. 4), could have reached the course she took to the equator with a loss of time in her voyage of only four days (Trans. pp. 96, 99, 100, 101).

With such winds she could have made the port of Valparaiso, in latitude 33 South, or thereabouts, on March

15, and from Valparaiso, as delineated on the charts (Libelant's Exhibits Nos. 4 and 5), could have reached her course to the equator with a loss of time in her voyage of only four days (Trans. pp. 96, 99, 100).

The charts (Libelant's Exhibits Nos. 4 and 5) are duplicates of the charts (Claimants' Exhibits Nos. 2 and 3), except that they also have traced on them by Mr. Carrescio, formerly an officer in the Chilian navy, the daily courses and distances the "Iroquois" in all probability approximately would have made, if on March 1 she had borne away for either Ancud or Valparaiso, and thence had proceeded from either of those ports to the course she actually pursued, and also the small loss of time in the voyage. Such tracings were made with reference to the winds encountered by the vessel after March 1 (Trans. pp. 99, 100, 101). Mr. Carrescio testified that in the month of March the winds are fair, on the courses so delineated, for reaching Ancud and Valparaiso, and that along that coast there is a current, called Humboldt current, running north about one mile an hour (Trans. p. 95).

The Court of Appeals found (Trans. p. 128) that the "Iroquois" could have made either Ancud or Valparaiso with a probable loss of not more than four or five days in her voyage.

If libelant had been taken either to Port Stanley, Sandy Point, Ancud, or Valparaiso, he could have received skillful surgical treatment, and could have had proper nursing and the appliances proper for his injured leg, and his leg could have been kept in a position of rest, a position abso-

lutely necessary for the union of fractured bones (Trans. pp. 92, 93, 96, 97, 98, 99).

In the vessel's course to Ancud or Valparaiso it was probable, in fact reasonably certain, that she would have met steamers bound to Valparaiso, Sandy Point or other South American ports, where libelant could have been taken for surgical treatment.

Libelant, at the time of the accident, was twenty years old and in good health (Trans. pp. 30, 31). Two surgeons testified that if simple fractures, similar to those of libelant, were first treated by a surgeon even four weeks after they were received, the bones would unite, and that broken bones of a person of the age of libelant, other conditions being the same, would unite more readily than those of an older person (Trans. pp. 76, 77 and pp. 83, 84), and that in the case of a simple fracture properly treated a union is complete in from four to six weeks after the fracture (Trans. pp. 80 and 87). One of the surgeons, Dr. White, amputated libelant's leg, and treated it a good portion of the time while libelant was in the hospital, and testified that libelant had no constitutional disease (Trans. pp. 72, 73, 76). The other, Dr. Lawlor, has had long and large experience as a practicing surgeon (Trans. p. 83).

The splints put around libelant's leg by the master were allowed to remain in place for five weeks, to wit, from February 23, the day of the accident, until March 30, when, as shown by the mate's log, the vessel was in latitude 7 degrees 50 minutes south, longitude 108 degrees 52 minutes west (Trans. p. 62). The testimony shows

that a surgeon would have removed the splints four or five days after first putting them on, and at intervals of a few days thereafter, for the purpose of examining the leg and determining whether the bones were properly in place and uniting (Trans. pp. 81 and 86).

The master testified that on March 30, when he first removed the splints, the leg seemed to be knitted. The libelant testified (Trans. p. 25) that after March 30, his leg was dressed by himself and his shipmates in the forecastle and (Trans. p. 26) that when the splints were off his leg was "loose" and "worked back and forth", "so that any body could see it". Dr. White also testified (Trans. p. 77) that there had been no union, and the history of the case is to the same effect. The District Court (Trans. p. 109), and the Court of Appeals (Trans. p. 126) wholly discredited the master's testimony in this regard, and found that the fractured bones had failed to unite. On March 30, however, the vessel was so near the equator and so far to the westward, that she was as near San Francisco as Valparaiso (San Francisco is about latitude 37 degrees north, longitude 122 degrees west, and Valparaiso is about latitude 33 degrees south, longitude 72 degrees west), and the master's many opportunities to land libelant in time to save his leg were gone.

When the vessel arrived at San Francisco, about two months and a half after the accident, the master allowed libelant to go ashore on crutches as best he could and gave him no further attention. Instead of providing a place for libelant in the cabin or in some other suitable place on his vessel of 1997 Register tons, and there making him as

comfortable as possible, and giving him the attention and diet proper and humane under the circumstances, the master kept him in the forecastle, where he was furnished with no different food than was provided for its other occupants (Trans. pp. 28, 32), and without assigning any one to assist him in answering the calls of nature. The master testified he told the steward to give libelant anything he asked for, but admitted he did not know what the steward did or did not in that regard. It appears that the master had theretofore suffered from a broken leg, but he was attended by a surgeon (Trans. p. 60). The master's disregard for libelant's comfort and health during the weeks he kept him on the vessel after the accident is in keeping with his disregard of his legal duty to take libelant either to Port Stanley or to one of the South American ports mentioned. If his wife or child had been with him and had suffered a similar injury, or if the vessel had been in need of a spar, we doubt not he would have gone into one of these ports. Libelant, in the performance of the duty he owed to his employers, had exposed his life and limbs for the preservation of the vessel. The footing of a seaman, while furling sail, is insecure in a high degree against the force of a gale of wind, and yet, when the libelant, under such conditions, lost his footing and received the injury he did, the master, with all the opportunities the situation offered him, considered the forecastle of a moving vessel good enough for libelant, and assigns as a reason for bringing him to San Francisco that he thought he could properly set and treat the leg. In other words, rather than to deviate from his course at a small expense to his owners and with a

loss of only a few days' time, he chose to risk bringing libelant to San Francisco and to expose him to the mortification likely to take place while passing through the tropics and to the accidents and discomforts inseparable from the unceasing motion of a ship at sea, and daily removals from his bunk for the performance of acts of nature, and entailed on libelant weeks of protracted and unnecessary suffering and the loss of a leg.

As said by Judge Sprague in *Brown vs. Overton,* 1 Sprague, 462, Fed. Case No. 2024, referring to the excuse of a master that his deviation to land an injured seaman would have occasioned expense:

> "This presents not the least extenuation. It is merely saying that if he had performed his duty, the owners would have been subjected to a burden which the law imposes."

And by the same Judge, referring to that master's doubts of any benefits to the seaman if he had landed him:

> "Any doubts would have been removed if the master had performed his duty. By going into port, it would have been ascertained what could have been accomplished."

By going into a South American port, after March 1, it would have been ascertained that libelant's leg had not begun to unite, and the leg would have been saved to libellant for the ensuing 41 years of his expectancy of life.

We urge upon the Court that the master had no right to speculate on the chances that the libelant's leg *might* be properly set and *might* remain so, and that the libelant *might* recover on board the vessel, when he had opportunities, with very little delay to the vessel, to place him

where he could have been properly treated and his leg saved to him beyond a peradventure. The results of such speculation are the loss to the libelant of a leg, and all its consequences during the remainder of his life. The libelant was 21 years old when this cause was heard in the District Court (Trans. p. 21). See "The American Table" (Trans. p. 122) used by the Mutual Life Insurance Company of New York in estimating the longevity of applicants for insurance (Trans. p. 69).

What was thought by the respondent's shipmates is to be found on page 30 of the transcript.

We quote from page 818 of *Bryant's Practice of Surgery*, third American edition, 1881, a standard work, as testified (Trans. p. 82) by Dr. White:

> "The principles of the treatment of fractures are very simple, though the practice is often very difficult. To restore a bone to its normal position, and to keep it there by means of surgical appliances, or as John Hunter expressed it in 1787, 'to place the parts in a proper position by art, that is, as near their natural position as possible, and keep them so', are simple rules to be observed, but to carry them out often demands the highest surgical skill and ingenuity, and yet the whole treatment of fractures is really comprised in these two indications."

We are not referred to any case, and we know of none other than the one at bar, in which the Court has deemed it necessary to speculate on what *might* have been the delay to a vessel *after* her departure from a port of distress, if she had gone to such port. We submit that if an injured seaman require surgical aid,

and if such aid cannot be given him on board his vessel, and if there is an available port to which he can be taken, the obligation of the master to take him to such port arises, and that the time involved in *going* to such port determines its availability. The District Court and the Court of Appeals found each of these three conditions in the case at bar.

Though the master be held to be a fellow-servant of the seaman in the navigation of a ship, he is not such fellow-servant

> "in respect to the owners' duty to the seamen which the master performs in their behalf and as the owners' representative * * * and when such duty is not performed and the seaman suffers injury from such neglect the ship in a proceeding *in rem*, and the owners in a suit against them, are liable for the damages suffered—"

Scarff vs. Metcalf, 107 N. Y. 211, 216,

where the cases on this point are cited by the Court. It is a case in which by a master's neglect to call a surgeon a seaman lost a leg by amputation.

The language of the Court in *Brown vs. Overton, supra*, is particularly pertinent to the case at bar:

> "Scarcely a case can be presented where the obligation to land an injured seaman applies with greater force than the present."

In *Peterson vs. The Chandos*, 4 Fed. 645, the vessel, when the fall of a seaman from aloft caused a fracture of the femur, was in latitude 38 South, longitude 90 West. A difference of opinion existed on board as to whether the leg was broken or not. The master testified that until 24

days later, when the vessel was north of the equator and 20 degrees further west, he did not think it was broken. The voyage was from New York to Portland, Oregon. Judge Deady found that it was very uncertain what time it would take to reach Valparaiso from the locality of the accident, there being no evidence of the force or direction of the wind between those places. He said (p. 652):

> "If it had been shown that the vessel could, under the circumstances, make about ten miles an hour, and thereby make Valparaiso in a little more than five or six days, it might have been proper for the master to have gone in there—indeed, I think it would have been his duty to do so."

Testimony as to the force and direction of the winds, lacking in the case of "The Chandos", is given in the case at bar.

The "Chandos", like the "Iroquois", was a ship with a full cargo. If it were the duty of the master of the "Chandos" to make such sacrifice of time and risk of cargo for his seaman, notwithstanding he did not think the leg was broken, how much greater the obligation in the case of the "Iroquois", where there was no doubt as to the severity of the injury, and where the master had a choice of available ports to which he could have taken libelant. The injury in the case of "The Chandos" occurred when that vessel was about 1100 miles almost due west of Valparaiso, and if she had gone to that port she would have lost about the same time while returning to the line of her course as in going therefrom to Valparaiso.

That, under the circumstances, and by virtue of the obligations of the contract between libelant and the vessel,

it was the duty of the master to land libelant at one of the places mentioned, we cite *Whitney vs. Olsen,* 108 F. R. 292.

The master of the "Iroquois" would have performed his duty if he had *honestly endeavored* to reach a port of distress. As he made no such endeavor, the contention of claimants that the time of a deviation (such as we allege should have been made) is problematical, is unworthy of consideration. If he had endeavored to make a port of distress it would have been ascertained what could have been accomplished.

The Court is asked by the petitioners to conclude that on March 1 and thereafter, the master was justified in his assumption that the broken bones were in place and properly uniting, and that therefore, there was no obligation to take libelant to any South American port or to deviate in an attempt to do so, and they say, on page 25 of their brief, that between February 23 and March 1, "there was " nothing to indicate that the libelant was not getting " along all right; he thought that he was, and so did the " master. No special circumstances connected with his " injury were developed to indicate that, for the purpose " of procuring surgical aid, it was necessary or advisable " to put the ship about and proceed to Port Stanley". We never have contended, and now do not contend, than on March 1st, it was the duty of the master to put the ship about and proceed to Port Stanley. On March 1st, six or seven days after the accident, the vessel was well into the Pacific and then the master had better opportunities to make Evangelistas Island or Ancud or Valparaiso than to make Port Stanley.

Certainly on March 1st there was nothing to indicate that the libelant *was not* getting along all right, if only indications discoverable on the outside of the bandages were necessary for a diagnosis of libelant's condition. Certainly, also, on March 1st, there was nothing to indicate that libelant *was* getting along all right, if indications only ascertainable after the removal of the bandages were not necessary for such diagnosis. If, on March 1st, or at any other *proper* time thereafter, the bandages had been removed, manipulation of libelant's leg would have indicated whether or not the broken bones then were in place, and whether or not it was necessary or advisable to make a port of distress. This was not done on March 1st, nor was it done until March 30th, and the master had no sensible basis until March 30th for any conclusion as to libelant's condition.

What is said in this connection is equally applicable to all times between March 1st and March 30th. It was during such period that the vessel was nearest to Ancud, and nearest to Valparaiso. Claimants' Exhibit No. 2 shows she was nearest Ancud at noon of March 9th when in latitude 42, and due west of that port. Claimants' Exhibit No. 3 shows she was nearest Valparaiso at noon of March 15th, when in latitude 33 and due west of Valparaiso. Without cause or investigation, the master was content to assume that libelant's leg was getting along all right, during all of the five weeks between the time of the accident and March 30th, on which day the vessel was as near San Francisco as Valparaiso.

We submit that the master's testimony that on March

30th, the bones seemed to be knitted all right, and his testimony (Trans. p. 50), when asked why prior to that day he did not go to a port of distress: "I did not think it " necessary to go into any port. * * * Entirely getting " along all right. * * * *I thought the leg would be all " right when he got here. * * * *I did not think it nec- " essary to put away, I did not see any need of it. I " did not think he could get any better treatment than " what I could give him myself at the time", was a mere subterfuge and a sham, manufactured as an excuse for not going to a port of distress. The master's *first examination* of libelant's leg, after his attempt to set it, was on March 30, fifteen days after he had passed the latitude of Valparaiso, when, as already stated, he was as near San Francisco as he was to Valparaiso. His reason for not going to a South American port was the expense to his owners and because to do so would have taken him out of the line of his course to San Francisco (Trans. p. 60). He admits that weather and conditions were favorable (Trans. p. 66). He says (Trans. p. 67), referring to the latitude of Valparaiso, "I did not make 30 miles a day in that latitude". The charts (Claimants' Exhibits Nos. 2 and 3) show the number of miles made each day by the vessel when in and about that latitude, except for March 12, and contradict such statement. However, the master should have set his course for Valparaiso or some South American port long before he reached such latitude.

If the "Iroquois" had borne away for Ancud or Valparaiso at a proper time, she would have taken a northerly or northeasterly course and from either of those ports she would have taken a northwesterly course to

the equator, and *during all such times* would have been advancing towards San Francisco, her port of destination, and in her course to Ancud or Valparaiso it is probable, in fact, reasonably certain, that, as before shown, she would have met steamers bound to Valparaiso, Sandy Point or other South American ports.

If, under the favorable circumstances of winds, weather and positions presented by the evidence in the case at bar it was not the duty of the master of the "Iroquois" to seek surgical aid for the respondent, it is difficult to conceive conditions on a voyage from New York to San Francisco which would make such a duty imperative.

We are not limited in our discussion of the negligence of the master after he got into the Pacific, as seems to be implied in the petitioners' brief, by the positions of the vessel when nearest Ancud and Valparaiso, which, as we have shown, were due west of those ports respectively, and we are not compelled to meet the objection of petitioners that those ports then were too distant, and that the voyage would have been unjustifiably prolonged if the vessel then had gone to either of them. The proper time for bearing away for Ancud or Valparaiso was on March 1st, or shortly thereafter. On Libelants' Exhibits Nos. 4 and 5 are shown the daily courses and distances the vessel in all probability approximately would have made, if, on March 1st, she had sailed for either of those ports, and thence had proceeded to the course she took to the equator, and also the small loss of time to the voyage. The master placed the proper point for first bearing away for Valparaiso at about latitude 50 degrees south, longitude 80

degrees west (Trans. p. 47). The charts show that he could have reached such point at about noon of March 3d. But, say petitioners, the vessel could not have sailed on a straight line thence to Valparaiso. The mate's log-book shows the daily winds encountered by the vessel thereafter, and such winds were fair winds for a course on an approximately straight line, either to Ancud or Valparaiso, and also thence to the course she took to the equator, and with a loss of time not exceeding four days. To this effect, also, is the testimony of Mr. Carrescio (Trans. pp. 99, 100, 101). Of course, the distance from a point of deviation to a port of distress is not to be doubled, in estimating the prolongation of a voyage, unless it would be necessary for the vessel to return to the vicinity of the point of deviation and there resume her original course.

We do not think it at all surprising, as suggested at the foot of page 24 of petitioners' brief, that libelant, on or after March 30, did not call the attention of the master to the fact that his leg was loose, and for the same reason that it *is* surprising to claimants, namely, that "anybody could see it". The only material fact is, that there was no union then or at any other time. That the libelant signed the entry on page 44 of the official log-book, cannot overcome the positive testimony, under oath, that the bones had not knitted, fortified as it is by the history of the case and all the probabilities; moreover, at the time he signed such entry he was sick and weak, and in consequence made a cross, although able to write, and doubtless would have signed anything the master told him to sign, without giving thought to its contents or import.

The master testifies that libelant thought he was getting along all right. The libelant testified that whenever the bandages were removed he was conscious there was no union of the broken bones. At no time prior to March 30th, was it possible, without removing the bandages, for either the libelant or the master to know whether the libelant was getting along all right. Libelant's condition at any time could have been ascertained by uncovering his leg; moreover, even if manipulation had shown that the bones, fortunately, were in place, we contend it was the duty of the master to have borne away for Evangelistas Island, Ancud or Valparaiso, at a proper time, as at any moment thereafter, the unceasing and often violent motion of the vessel or the necessary daily moving of libelant might have, and undoubtedly would have, displaced them.

A good portion of petitioners' brief is in praise of the master's general treatment of libelant after the accident, and the master's conduct in that regard, as viewed by their counsel, is urged with the design to distinguish the master as a commander of due discretion, reasonable, prudent and humane, uninfluenced by selfish motives, and completely faithful to his obligations to libelant when he brought him crippled to San Francisco, instead of procuring him surgical treatment after his injuries. We are unable to join in such laudation. Such a master, under the circumstances of this case, would have gone or attempted to go to Port Stanley, or in the early days of March would have satisfied himself of the condition of his injured seaman, by removing the bandages, the only possible way to learn such condition, and even if such investi-

gation disclosed that the bones then were in proper place, his prudence and humanity, in view of the probability of subsequent displacement if the seaman were retained on the vessel, would have suggested the advisableness of making, or at least, attempting to make, a port of distress. Such a master, while the injured seaman remained in his vessel, would have kept him in the cabin or in some more appropriate place than the forecastle, and would have considered it his duty to know whether or not his steward was giving the seaman the food and attention proper for his condition.

The master testified that when he himself did not dress libelant's leg the steward did (Trans. p. 62). Such dressing was not begun until March 30th, when the bandages first were removed, and was because of sores on the leg caused by the bandages, and then first discovered by the master, We submit that the degree of the master's care of libelant after the accident is not to be measured by the vaseline supplied on and after March 30th, for the relief of libelant's sores, or by the salts, the administration of which to the libelant is so highly commended by petitioners' counsel. The petitioners have not attempted to show that the master was unable to provide more comfortable and appropriate quarters than the forecastle for libelant, during the two and a half months after the accident, or that the forecastle was a proper place for a seaman suffering with a broken leg. The master's testimony gives no excuse for keeping libelant in the forecastle, or for failing to provide some member of the crew to help libelant to attend to the calls of nature. This service

was performed by the humanity of libelant's shipmates. The testimony of the master that the forecastle was dry and well-ventilated, even if true, furnishes no justification. That it was "warm" we may well believe. The master's disregard for libelant's comfort and his admitted ignorance of the kind of food actually served to libelant by the steward, are very significant in considering whether or not the master was uninfluenced by selfish motives and acted in good faith and fidelity to his duties and obligations in bringing libelant to San Francisco.

There is no contention by petitioners that the master did not know of conditions at Evangelistas Island and at Ancud. If he did not, he was incompetent for the command of the "Iroquois". He had been "round the Horn" sixteen times (Trans. p. 46) and had been a master four years (Trans. p. 59). Nor is there any denial by petitioners that surgical aid could have been procured at either of the places we have mentioned as ports of distress; that they could have been, is abundantly proved by the testimony of Mr. Carrescio. That libelant made no request to be landed at any port or place, or made no suggestion to that effect, is not material; it was one of the obligations of the contract of the owners with libelant, that if he should require surgical aid for an injury received in their service it should be furnished to him. The libelant was ignorant of his rights in the premises, as well as of the opportunities of the master to make a port of distress, but the master knew his duty and his opportunities, and we apprehend that petitioners will not be allowed to escape liability because of the omission of

libelant to request the master to perform his known duty. The master stood *in loco parentis* to libelant, *Robertson vs. Baldwin*, 165 U. S. 287.

We leave it to the Court to determine, if necessary, whether it would have been proper if the master had put libelant on board a passing steamer, if it could have been done, or if he had transferred him to Evangelistas Island, thence to be shipped either to Sandy Point or to Valparaiso. Would he not be commended for either of such actions by all right-minded persons? Whether or not he could have put libelant on board a passing steamer would be more demonstrable if he had taken a course to make it possible, than by now discussing its probabilities. If libelant had been disposed of in either of these two ways, or taken to Port Stanley, Ancud or Valparaiso, there would be no escape for the payment of his wages up to the termination of the voyage. The vessel and her owners would be bound for such payment, and for the necessary attendance upon the libelant.

Whether or not there was an American Consul resident at Ancud or Sandy Point does not appear, nor is it material. There is an American Consul-General at Valparaiso, whose jurisdiction extends over the whole of Chili, and he undoubtedly could have been communicated with by telegraph, although it would have been wholly unnecessary. What libelant required was not an American Consul, but surgical aid, and it could have been found at either of these places, as well as Valparaiso. If Ancud had been the only accessible port of distress it was the duty of the master to take libelant to that port and leave

him there in charge of a responsible person, and make proper arrangements for his treatment and care, which he certainly could have done whether there was an American Consul at Ancud or not.

As to the effect on insurance, if the master had deviated for surgical aid for libelant, we say there is no testimony that either the vessel or her cargo or any part thereof was insured, and further we have been unable to find a case holding that a deviation to obtain surgical aid for an injured seaman avoided an insurance policy, or gave to the cargo-owner, *whether insured or uninsured* a cause of action against the ship-owner for damages to the cargo consequent on such deviation. All the authorities we have read are squarely against both of these contentions. In *Burgess vs. Equitable Marine Insurance Company,* 126 Mass. 70, it was held that a deviation, justified by necessity, did not avoid an insurance policy, and the subject is there very fully discussed. The Court says (p. 80),

> "Nor is the departure from the route for the purpose of saving human life a deviation; *nor is a policy avoided when the ship goes out of her course to obtain necessary medical attendance for those lawfully on board. Bond vs. Cora,* 2 Wash. C. C. 80; *Perkins vs. Augusta Ins. Co.,* 10 Gray 312; "*It is allowed from motives of humanity.*"

In *Perkins vs. Augusta Ins. Co.,* 10 Gray (76 Mass.) 312, the vessel went out of her course to obtain necessary medical attention for the captain's wife, who was not even a member of the crew. *Held,* that the deviation did not discharge the underwriter.

On this point see also the opinion of Judge Deady in *Peterson vs. The Chandos*, 4 F. R. 646, beginning near the bottom of page 652 and extending to middle of page 653.

The courts hold that it is not a deviation when the master goes out of the course of his voyage for the purpose of saving the lives of persons on board another vessel or on board his own vessel, or for medical or surgical aid for such persons, even though not members of his crew, and to whom his vessel owes no legal duty, *a fortiori* it is no deviation for a master to go out of his course to save the life or limb of a member of his crew or to procure medical or surgical aid for him in case of need, for in such case the vessel *owes* such legal duty by virtue of the contract between the vessel and the crew.

The solution of this question is what the law says a prudent and humane master, observing his duty to his owners and their obligations to an injured seaman, ought to do. Should the master of the "Iroquois" have taken chances, or should he have done that which would have, with certainty, saved the libelant's leg? We do not think any court of admiralty would hold that turning from a course for medical or surgical aid for an injured seaman was a deviation, even if it concluded that the master was unduly cautious in the interest of his seaman.

One of the results of the speculation of the master of the "Iroquois" is the loss to libelant of a leg. His conduct from the first shows that he never intended to go to a port of distress whether the leg was set properly or not, as he shaped a course which took him away from all opportunities to do so, thus proving that he regarded only the in-

terests of the owners and the progress of the voyage and wholly disregarded the rights of the libelant. Each day, after March 1, the vessel was further to the westward of South America than the day before. The law imposed on the master the duty of going to a port of distress, having the opportunity to do so, and will not permit him, when he has failed in that duty, to shield himself by saying that he thought he could treat libelant's leg properly on board the vessel. If he did not know he could treat libelant properly, and of course he could not have so known, it became his imperative duty to take him where he could receive proper treatment.

In *Tomlinson vs. Hewett,* 2 Sawyer 278, damages were decreed, because of the failure of a master to make proper arrangements for the treatment and care of a seaman, ill of the smallpox. Judge Hoffman in that case (p. 283) says:

> "The vigor with which courts of admiralty maintain and enforce not only the right of the seaman to be cured at the ship's expense, but also the duty of the master to omit no reasonable exertions to remedy or mitigate the effects of any accident that may happen to him is forcibly illustrated in the case of *Brown vs. Overton,* Sprague's Decisions."

"The Osceola", 189 U. S. 158, 175; distinctly recognizes the well settled law of the admiralty that a seaman injured, without his fault, in the service of a vessel, is entitled to be maintained and cured at the expense of the vessel.

It is admitted by the petitioners that for a breach of the obligation, on the part of the master or owner of a vessel, of the duty to provide medical and surgical care for a

seaman so injured, the owner is liable *in personam*, and the vessel *in rem*, in damages. The law on this subject is fully stated, and the authorities given, by the learned judge who delivered the opinion in the case of "*The Osceola*" (*supra*).

See cases cited in the opinions of the lower Courts in the case at bar.

See, also, "*The Troop*", 118 F. R. 769, decided in November, 1902, by Judge Hanford, of the District Court of the District of Washington. The libelant in that case brought his action against a vessel to recover compensation for excessive and unnecessary suffering, after a personal injury sustained by him while performing his duties as a member of the crew of said vessel, the master of which, instead of going to a proper port where the seaman could be treated by a surgeon, kept him on board the vessel and undertook the treatment of the case himself. Compensation was decreed to said seaman, and the opinion of Judge Hanford cites the principal authorities for his conclusions.

In *Danvir vs. Morse*, 139 Mass. 323 (a case cited by petitioners), the Court says:

> "So much of the instructions as requested the Court to rule that, if the master believed, though there would be delay in carrying the plaintiff to the port of destination, it would not be a serious delay, nor involve any serious result, then the master was not in fault in deciding as he did, was properly refused. This would have left the matter depend entirely upon the judgment of the master, if honestly exercised. Under the instructions given it was for the jury to consider the condition of the

plaintiff, the situation of the master, the ease with which he might reach another port, the probability of finding medical attendance, and all other circumstances, and to determine whether the plaintiff had sustained the burden of showing that the decision of the master was otherwise than reasonable and proper, which was the true rule."

In answer to the statement in the brief of counsel for the petitioners (p. 6) that neither the Court of Appeals nor the District Court made any specific findings of fact, we say that counsel is in error. Both the District Judge and the judges of the Court of Appeals set out the various facts upon which their conclusions were based.

These findings of fact are, (a) "Neither the master nor any other person on board of the vessel had sufficient knowledge and skill to properly set the leg, or to thereafter give it necessary surgical attention" (Trans. p. 109). "The master of the 'Iroquois' had no skill or experience in treating fractures" (Trans. p. 127).

(b). "Fractures similar to those sustained by libelant will unite, if properly treated by a surgeon, within three or four weeks after they are received, and * * broken bones of a person of the age of libelant, other conditions being the same, will unite more readily than those of a person of mature years" (Trans. p. 110).

(c). "The broken bones * * failed to unite, their fractured ends had become dead and amputation of the leg was necessary in order to save the life of libelant" (Trans. pp. 109, 110). "The bones of the leg failed to unite" (Trans. p. 126).

(d). "There was lack of such treatment, (proper sur-

gical treatment), both in permitting the appellee to remain so long on board a ship in motion and in daily moving him" (Trans. p. 127).

(e). At the time of the accident the wind was fair for Port Stanley and it could have been made in two or three days (Trans. p. 109).

(f). "There were several ports to which the appellee might have been taken for surgical treatment" (Trans. p. 128).

(g). "The ship could have made Evangelistas Island by sailing one or two days out of her course. From that island it seems that the appellee could have been taken by steamer to Valparaiso" (Trans. p. 128).

(h). "The 'Iroquois' herself could have made the port of Valparaiso with a loss of probably not more than four or five days in her voyage" (Trans. p. 128).

(i). "He might have reached the port of Ancud or San Carlos with about the same loss of time" (Trans. p. 128).

(j). "When, on March 30th, the splints were removed, the vessel was as near to San Francisco as to Valparaiso, and there was no recourse except to proceed on her voyage" (Trans. p. 128).

Upon these facts, thus found from the testimony, both the District Court and the Court of Appeals came to the conclusion that the master of the "Iroquois" had committed a breach of the obligation to care for and cure the leg of the libelant which had been broken in the service of the owners of that vessel, and that consequently the vessel was liable in damages to the libelant.

Counsel for petitioners harps a good deal upon the expression used in the opinion of the Court of Appeals "it was the duty of the master to bear away to some port of distress as soon as possible after the occurrence of the accident", as though this has or should have any influence upon the decision of this cause. It is of no consequence that the master did not bear away to a port of distress *"as soon as possible"* after the libelant's leg was broken on February 23rd. Notwithstanding the fact that at that time Port Stanley was his nearest port of distress, if he had deemed it best to take or send the libelant to Evangelistas Island or to Ancud or Valparaiso and thereafter had honestly endeavored so to do, he would have done his duty to the libelant and observed the obligations of the owners of the "'Iroquois" under their contract with the libelant.

The complaint is that the master did not bear away to any port, and that he never had any intention of so doing, whether the libelant's leg got well or not. He considered his duty to his owners and the *valuable* cargo of the vessel as paramount to any duty or obligation to the libelant. The cargo was *valuable* to the vessel and her owners. That the leg was *valuable* to the libelant was a matter of small importance, that is to the master and owners of the "Iroquois".

Respectfully submitted,

A. H. Ricketts

Counsel for Libelant and Respondent.

Walter G. Hewes,

D. T. Sullivan

Proctors for Libelant and Respondent.

Service of the within Brief and
receipt of a copy thereof are
hereby admitted, this 9th day
of January, 1904.

Milton Andrews

Counsel for Petitioners

Supreme Court of the United States.

No. 200.—October Term, 1903.

The Iroquois. } On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 2, 1904.]

This was a libel filed in the District Court for the Northern District of California by Matthew Bridges against the ship Iroquois, to recover damages for a failure of the master to provide suitable surgical treatment and care for the libellant, who had suffered injury by a fall from the main yard to the deck of the vessel.

The facts of the case were substantially as follows: The Iroquois left New York on December 27, 1899, bound for the port of San Francisco, with a full cargo of general merchandise. On February 23, 1900, while the vessel was rounding Cape Horn during heavy weather, and while libellant was aloft in the performance of his duty, he accidentally fell from the main yard to the deck of the vessel, thereby fracturing two ribs and his right leg in two places. The master, with the aid of the carpenter, set the leg in splints, kept the libellant in his berth, gave him such food and delicacies as the supplies of the ship permitted, and on March 30, after five weeks, removed the splints, and found the leg apparently in good condition. Before arriving at San Francisco, and early in April, he was able to leave his berth, go upon deck and walk about with the aid of a crutch. But after arriving at that port on May 7, 1900, he was sent to the hospital, where it was found that, while his ribs had healed perfectly, the bones of his leg had not united, and he was subsequently, and in October, compelled to suffer amputation, and, of course, became a cripple for the remainder of his life. The master was charged with a breach of duty in failing to put into an intermediate port and procure the proper surgical attendance.

Upon this state of facts the District Court entered a decree in favor of the libellant for $3,000, (113 Fed. Rep. 964,) which was subsequently affirmed by the Court of Appeals. (118 Fed. Rep. 1003.)

Mr. Justice Brown delivered the opinion of the Court.

The duty to provide proper medical treatment and attendance for seamen falling ill or suffering injury in the service of the ship has been imposed upon the shipowners by all maritime nations. It appears in the earliest codes of Continental Europe and was expressly recognized by this

court in the recent case of *The Osceola*, (189 U. S. 158.) Upon large passenger steamers a physician or surgeon is always employed, whose duty it is to minister to the passengers and crew in cases of sickness or accident. Of course, this would be impracticable upon an ordinary freighting vessel, where the master is presumed to have some knowledge of the treatment of diseases, and in ordinary cases stands in the place of a physician or surgeon, (*The Wensleydale*, 41 Fed. Rep. 602;) but for the further protection of seamen, vessels of the class of the Iroquois are compelled by law to be provided with a chest of medicines and with such anti-scorbutics, clothing and slop-chests as the climate, particular trade and the length of the voyage may require. (Compiled Stat. secs. 4569, 4572, 4573.)

What is the measure of the master's obligation in cases where the seaman is severely injured while the ship is at sea has been made the subject of discussion in several cases; but each depends so largely upon its own peculiar facts that the rule laid down in one may afford little or no aid in determining another, depending upon a different state of facts. The early cases of *Harden* v. *Gordon*, (2 Mason, 541,) and *Reed* v. *Canfield*, (1 Sumner, 195,) contain an exhaustive discussion of the general subject by Mr. Justice Story. But, as in both cases the disability occurred at or near a port, they are of no special value in this case.

We have carefully examined the cases of *Brown* v. *Overton*, (1 Sprague, 462;) *The Chandos*, (4 Fed. Rep. 647;) *The Scotland*, (42 Fed. Rep. 925;) *Whitney* v. *Olsen*, (108 Fed. Rep. 292;) *The Troop*, (118 Fed. Rep. 769,) and *Danvir* v. *Morse*, (139 Mass. 323,) and are of opinion that none of them fit the exigencies of the present case. We cannot say that in every instance where a serious accident occurs the master is bound to disregard every other consideration and put into the nearest port, though if the accident happen within a reasonable distance of such port, his duty to do so would be manifest. Each case must depend upon its own circumstances, having reference to the seriousness of the injury, the care that can be given the sailor on shipboard, the proximity of an intermediate port, the consequences of delay to the interests of the ship owner, the direction of the wind and the probability of its continuing in the same direction, and the fact whether a surgeon is likely to be found with competent skill to take charge of the case. With reference to putting into port, all that can be demanded of the master is the exercise of reasonable judgment and the ordinary acquaintance of a seaman with the geography and resources of the country. He is not absolutely bound to put into such port if the cargo be such as would be seriously injured by the delay. Even the claims of humanity must be weighed in a balance with the loss that would probably occur to the owners of the ship and cargo. A seafaring life is a dangerous one, accidents of this kind are peculiarly liable to occur, and the general principle of law that a person entering a dangerous employ-

ment is regarded as assuming the ordinary risks of such employment is peculiarly applicable to the case of seamen.

To judge of the propriety of the master's conduct in a particular case we are bound so far as possible to put ourselves in his place, and inquire whether, in view of all the circumstances, he was bound to put into an intermediate port. The charge in the libel is that he should either have put back to Port Stanley in the East Falkland Islands, or deviated from his course and made the port of Valparaiso, "or any one of several other ports in the southern part of South America." The very indefiniteness of this charge shows that neither libellant nor counsel had in mind any particular port, and it was not until the testimony of a former officer of the Chilian navy was taken at San Francisco, that they were able to fix upon the port of San Carlos or the Evangelist Islands as proper places at which to make call. In view of this inability to select a proper port until the officer whose business it had been to cruise up and down the Chilian coast had informed them, it may certainly be contended with great show of reason that the master was not bound to know of the existence of these ports, except as he was informed by the chart, or of the possibility of obtaining surgical treatment at them. While masters plying upon vessels between New York and Pacific ports would be presumed to know of such familiar harbors as those of Port Stanley and Valparaiso, it by no means follows that they are chargeable with knowledge of every port upon the southwest coast of South America, or of their surgical facilties. The accident occurred upon one of the loneliest and most tempestuous seas in the world. For over one thousand miles from Cape Horn to Valparaiso there seem to have been but one or two places at which it would be feasible to make a call. The evidence shows that the ship at the time was about 480 miles from Port Stanley, and with the winds then prevailing it would have been possible to reach that port in three or four days, but that to return to the place of the accident in view of the head winds might have taken as many weeks. During this time the owners of the ship would sustain a heavy loss in the wages and provisions of the crew, and the demurrage of the ship, and while the cargo is not shown to have been perishable, there would be a risk of the loss of a market by the consequent delay in reaching San Francisco. The master is not chargeable with fault in failing to put back to Port Stanley.

It was also suggested that the ship could have made the Evangelist Islands, at the western end of the Straits of Magellan, by sailing one or two days out of her course; but it was shown that the only building there was a light-house, from which a small steamer was accustomed to put out to passing vessels in case a signal for relief was hoisted, and that nothing could be done there, except possibly to place the seaman upon a steamer bound north to Valparaiso or east to Sandy Point, near the middle of the straits.

The probability of obtaining aid by this course, and the certainty of the limb being injured by the delay, would have made it highly inadvisable to adopt it. As there is no harbor in the islands, the various transfers from the ship to a boat and from the boat to shore, and the return to another ship in the rough water that might be expected at that point, would have been extremely dangerous to a person in libellant's crippled condition. The transfer of passengers from a ship to a boat, even in a moderate sea, is attended with considerable difficulty, and, to a person with a broken leg, with great danger, in view of the unequal rising and falling of a large ship and a small boat. Had the master adopted this course and injury had resulted to the libellant, he could hardly have escaped the imputation of negligence.

The libellant contended in his brief that, assuming that the master was not in fault for failing to stop at the Evangelist Islands, he should have put in at the port of San Carlos or Ancud, which lie near together, where it seems there is a good harbor, a city of 15,000 or 20,000 inhabitants, and ample surgical facilities. We are not impressed with the force of this argument. These are not harbors at which vessels from the Atlantic and Pacific ports are in the habit of stopping. While the master was apprized by his charts of their existence, it might well be that he was ignorant of the population and of the accommodations for disabled seamen. There was no American consul there, and quite possibly no one familiar with the English language. To convict the captain of negligence for not calling there it must be shown that he knew or should have known that the libellant could obtain proper treatment. In short, the suggestion of these ports appears to have been purely an afterthought, inspired by the testimony of the Chilian officer.

With respect to Valparaiso, the case is different. This port appears to be about 1,500 miles from the place of the accident, and, with favorable winds, could have been reached in 14 days. It is true that the direct course from Cape Horn to San Francisco passes Valparaiso at a distance of about 600 miles; but the testimony all shows that if the Iroquois had borne away and hugged the South American coast she might have put into Valparaiso, left the libellant there, and resumed her course without more than five or six days' detention. Valparaiso is a large city, with ample hospital facilities, and with an American consul general resident there.

We have no criticism to make of the treatment of libellant immediately following the injury, except that we think he should have been taken into the cabin, where he could have been more comfortably provided for. His leg was put in splints as well as the master and carpenter knew how to do it; he was kept to his berth in the forecastle and was fed with such delicacies as the ship's supplies afforded. No fever set in, and when the splints were taken off, about five weeks after the accident, and after the vessel had

passed Valparaiso, the leg was found to be in good condition, except for certain sores which had broken out upon it, caused by the long confinement in splints. It is true the libellant said the bones were not united, but he does not seem to have complained of this to the master; yet with a careful examination, such as the master was bound to make, we think he should have detected it. It may be, however, that the bones failed to unite by reason of the libellant being allowed to go upon deck and walk about on crutches. But however this may be, it was admitted that when the splints were taken off the vessel was about as near San Francisco as Valparaiso, and that nothing would have been gained by turning about at that time.

The real question in the case is: whether the master, knowing his ignorance of surgery, the serious nature of the libellant's injury, the poor accommodations for him in the forecastle, the liability of inflammation setting in, and of the bones not uniting, the fact that he was to be carried through the tropics, where to an invalid confined in the forecastle the heat would be almost intolerable, he should not, even at the sacrifice of a week, have put into Valparaiso and left the libellant there in charge of the American consul. Upon the other hand: libellant made no complaint of his treatment; did not ask to be taken into an intermediate port, and, so far as appears, the master did not know that the wound was not healing properly. The fact that the ribs had already united probably induced him to believe that the leg had also healed, although a careful examination could not have failed to reveal the truth. We lay no stress upon the fact that the libellant did not ask to be taken into an intermediate port. He was a boy, largely ignorant of his rights and duties. The master was his legal guardian in the sense that it is a part of his duty to look out for the safety and care of his seamen, whether they make a distinct request for it or not. If, on arriving at Valparaiso the bones were found not to have knitted together, there was at least a chance of securing their union by proper treatment. If, upon the other hand, they had united there was a certainty of securing ultimate recovery by careful nursing, and by the use of facilities which the hospital undoubtedly would have, and which the ship undoubtedly had not. To put it in a light most favorable to the master, he speculated upon the chance that the union of the bones had taken place without seeking to inform himself of the fact. The courts below held that the master did not discharge, as he should have done, the claim of humanity which the serious nature of the injury and the helpless condition of the libellant imposed upon him.

Upon the whole, while the case is by no means free from doubt, we are not disposed to disturb the decree of the court below in holding it to have been the duty of the master to put into an intermediate port. We regard the case as peculiarly one for the application of the general rule so often

announced by this court, both in equity and admiralty cases, that this court will not reverse the concurring decisions of two subordinate courts upon questions of fact, unless there be a clear preponderance of evidence against their conclusions. (*The S. B. Wheeler*, 20 Wall. 385; *The Lady Pike*, 21 Wall. 1, 8; *The Richmond*, 103 U. S. 540; *Towson* v. *Moore*, 173 U. S. 17; *Smith* v. *Burnett*, 173 U. S. 430, 436.)

As the decision of the District Court was unanimously affirmed by the Circuit Court of Appeals, we do not think there is any such preponderance of evidence as would justify us in disturbing their conclusions. The decree is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.